

any market order imbalance on the opening, such imbalances would continue to be addressed in the same manner.<sup>8</sup>

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of section 6(b)(5) of the Act,<sup>10</sup> in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. The Exchange believes that the proposal provides for a very limited exception to the general requirement that Market-Maker's quotes be for a minimum ten contracts. The Exchange believes that this exception, which in the Exchange's view is narrowly-tailored, will provide a measure of protection to Market-Makers when the underlying primary market disseminates less than a 1000-share quote during the opening. Accordingly, the Exchange believes the proposal serves to enhance the incentives of Market-Makers to quote competitively during Hybrid opening rotations and reduces the disincentives to quote competitively.

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

The Exchange does not believe that the proposed rule change will impose

<sup>8</sup> HOSS will not open an option series if the opening trade would leave a market order imbalance (*i.e.*, there are more market orders to buy or to sell for the particular series than can be satisfied by the limit orders, quotes and market orders on the opposite side). If this condition occurs, a notification will be sent to market participants indicating the size and direction (buy or sell) of the market order imbalance. HOSS will not open the series until the market order imbalance is satisfied and will repeat this process until the series is open. See CBOE Rule 6.2B(e)(iii) and (f). Upon receipt of these messages, generally the Designated Primary Market-Maker and Electronic Designated Primary Market-Maker(s) or Lead Market-Maker, as applicable, other Market-Makers with an appointment in the class, and/or other market participants, would take steps to address and resolve the market order imbalance (which steps may include, for example, a Market-Maker adding more size to his quotes). See also CBOE Rule 8.7(b) (which provides, among other things, that a Market-Maker has a continuous obligation to engage, to a reasonable degree under the existing circumstances, in dealings for his own account when there exists, or it is reasonably anticipated that there will exist, a temporary disparity between the supply of and demand for a particular option contract) and CBOE Rule 7.5 ("Obligation for Fair and Orderly Market") (which provides, among other things, that Market-Makers with an appointment in a class that are present on the floor of the Exchange may be called upon to make bids and/or offers that contribute to meeting the standards set forth in CBOE Rule 8.7).

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

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

No written comments were solicited or received with respect to the proposed rule change.

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

Within 35 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 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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2007-59 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2007-59. 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 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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-CBOE-2007-59 and should be submitted on or before November 15, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56677; File No. SR-FINRA-2007-005]

**Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of a Proposed Rule Change Relating to NASD Rule 11870 (Customer Account Transfer Contracts) and NYSE Rule 412 (Customer Account Transfer Contracts) To Make the Time Frames in the Rules for Validating or Taking Exception to an Instruction To Transfer a Customer's Securities Account Consistent With the Time Frames in the Automated Customer Account Transfer Service**

October 19, 2007.

### I. Introduction

On August 8, 2007, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on September 13,

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

2007.<sup>2</sup> The Commission received four comment letters in response to the proposed rule change.<sup>3</sup> For the reasons discussed below, the Commission is approving the proposed rule change.

## II. Description

FINRA is amending National Association of Securities Dealers, Inc. ("NASD") Rule 11870 ("Customer Account Transfer Contracts") and New York Stock Exchange ("NYSE") Rule 412 ("Customer Account Transfer Contracts") to make the time frames in the rules for validating or taking exception to an instruction to transfer a customer's securities account assets and for completing the transfer of the assets consistent with the time frames in the National Securities Clearing Corporation's ("NSCC") Automated Customer Account Transfer Service ("ACATS") transfer cycle.<sup>4</sup>

NASD Rule 11870 and NYSE Rule 412 regulate the transfer of customer accounts from one member ("carrying firm") to another ("receiving firm"). Such transfers generally occur through ACATS, an electronic transfer system developed by NSCC to automate and standardize the transfer of accounts. Currently, NASD Rule 11870(b) and NYSE Rule 412(b)(1) require carrying members to validate or to take exception to an instruction to transfer securities account assets within three business days following receipt of a Transfer Initiation Form ("TIF") or transfer instruction. NASD Rule 11870(e) and NYSE Rule 412(b)(3) require carrying members to complete the transfer within three business days following the validation of a transfer instruction.

FINRA is amending NASD Rule 11870(b) and (e) and NYSE Rule 412(b)(1) and (b)(3) to reduce the validation period from three business days to one business day and to provide that the time frames in NASD Rule 11870(b) and (e) and NYSE Rule 412(b)(1) and (b)(3) will change if and when NSCC modifies those

requirements in the future.<sup>5</sup> FINRA will also announce any such future changes in time frames to its members in a Regulatory Notice and other appropriate communications.

## III. Comment Letters

The Commission received four comment letters in response to the proposed rule change.<sup>6</sup> Two of the comment letters supported the proposed rule change and one comment letter, while not specifically opposing the proposed change, did not believe that the proposed changes would alone be sufficient to reduce delays in the account transfer process. A fourth comment letter supported the proposed rule change while also suggesting that further action be taken to reduce other delays in the account transfer process.

Two of the supporting comment letters, written on behalf of the Customer Account Transfer Division of the Securities Industry and Financial Markets Association ("SIFMA") and Edward D Jones & Co., LP ("Edward Jones") both expressed the belief that the proposed reduction to the account transfer time frame by two business days will significantly improve the experience of investors when transferring assets. The SIFMA letter also addressed the concerns reported by FINRA of some introducing brokers to the proposed rule change. SIFMA expressed its view that based on its experience working with members of the Customer Account Transfer Division on the proposed changes to ACATS, the changes would not result in hardship of any one group of clients or member firms.

The comment letter written on behalf of Lincoln Investment Planning, Inc. expressed doubt that reducing the validation period alone will alleviate delays in the transfer of securities. Rather, the commenter states that such a reduction should be accompanied by specific time frames by which customers are informed by their receiving firms of exceptions taken in the transfer process so that such exceptions can be rectified consistent with firms' obligation to "promptly" resolve any exceptions.<sup>7</sup> The comment letter from R. Clements expressed support for the reduced account transfer time frame but also suggests that further action be taken to reduce the amount of time for delivering firms to transfer proceeds from sales of account assets

that are liquidated rather than transferred through ACATS.

## IV. Discussion

Section 15A(b)(6) of the Act<sup>8</sup> requires, among other things, that FINRA rules must be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change is designed to accomplish these ends by making the time frames in NASD Rule 11870(b) and (e) and NYSE Rule 412(b)(1) and (b)(3) consistent with the time frames established by NSCC for validating or taking exception to an account transfer instruction and for completing the transfer thereby creating greater efficiency in the securities account transfer process. The rule change, therefore, takes an important step to improving the account transfer process.

## V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 15A of the Act and the rules and regulations thereunder.<sup>9</sup>

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-FINRA-2007-005) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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<sup>2</sup> Securities Exchange Act Release No. 56373 (September 7, 2007), 72 FR 52414.

<sup>3</sup> Deirdre B. Koerick, Chief Compliance Officer, Lincoln Investment Planning, Inc. (October 2, 2007); Ron Marino, President, Customer Account Transfer Division, Securities Industry and Financial Markets Association (October 4, 2007); Kristie Thompson, Group Leader, Customer Account Transfer, Edward D. Jones & Co., LP (October 5, 2007); and R. Clements (October 17, 2007).

<sup>4</sup> In a companion rule filing, NSCC is eliminating two business days from the validation period for both full and partial transfers. Securities Exchange Act Release No. 56678 (October 19, 2007) (order approving proposed rule change) [File No. SR-NSCC-2007-13].

<sup>5</sup> Should FINRA need to change the time frames because of a change in NSCC Rules, FINRA will file a proposed rule change to make such change.

<sup>6</sup> *Supra* note 3.

<sup>7</sup> See NASD Rule 11870(b)(2) and NYSE Rule 412(b)(2).

<sup>8</sup> 15 U.S.C. 78o-3(b)(6).

<sup>9</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>10</sup> 17 CFR 200.30-3(a)(12).