

## Non-Substantive Amendments to Rule Text

The early 2011 expansion of the Program prohibited the listing of \$2.50 strike price intervals for classes that participate in the Program. This prohibition applies to non-LEAP and LEAPS. The Exchange proposes to maintain this prohibition and codify it in Rule 5.5.01(a)(1) (Program Description).

For ease of reference, the Exchange is proposing to add the headings "Program Description," "Initial and Additional Series" and "LEAPS" to Rule 5.5.01.

The Exchange is proposing to more accurately reflect the nature of the Program and is proposing to make stylistic changes throughout Rule 5.5.01 by adding the phrase "price interval."

Lastly, the Exchange is making technical changes to Rule 5.5.01, *e.g.*, replacing the word "security" with the word "stock."

The Exchange represents that it has the necessary systems capacity to support the increase in new options series that will result from the proposed streamlining changes to the Program.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) <sup>15</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5) <sup>16</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market in a manner consistent with the protection of investors and the public interest. In particular, the proposed rule change seeks to reduce investor confusion and to simplify the provisions of the \$1 Strike Price Interval Program.

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

CBOE 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.

## 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 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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2011-040 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-CBOE-2011-040. 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 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 principal office of CBOE. 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 publicly available. All submissions should refer to File Number SR-CBOE-2011-040 and should be submitted on or before August 30, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2011-20172 Filed 8-8-11; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65025; File No. SR-FINRA-2011-027]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change To Amend FINRA Trade Reporting Rules Relating to OTC Transactions in Equity Securities That Are Part of a Distribution and Transfers of Equity Securities To Create or Redeem Instruments Such as ADRs and ETFs

August 3, 2011.

## I. Introduction

On June 9, 2011, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to amend FINRA Rules 6282, 6380A, 6380B and 6622 relating to trade reporting of over-the-counter ("OTC") transactions in equity securities. The proposed rule change was published for comment in the

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

<sup>16</sup> 15 U.S.C. 78f(b)(5).

<sup>17</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.

**Federal Register** on June 27, 2011.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

## II. Description of the Proposal and Discussion

### A. Background

FINRA proposed to amend FINRA Rules 6282, 6380A, 6380B and 6622 (“trade reporting rules”) relating to trade reporting of OTC transactions in equity securities. Under FINRA trade reporting rules, members are required to report OTC transactions in equity securities to FINRA unless they fall within an express exception. As a general matter, when members report OTC trades, FINRA facilitates the public dissemination of the trade information and/or assesses regulatory transaction fees under Section 3 of Schedule A to the FINRA By-Laws (“Section 3”) and the Trading Activity Fee (“TAF”). Certain transactions and transfers of securities are not required to be reported to FINRA (*e.g.*, trades executed and reported through an exchange, transfers made pursuant to an asset purchase agreement that has been approved by a bankruptcy court), while other transactions must be reported to FINRA only for the purpose of assessing the regulatory transaction fee (*e.g.*, away from the market sales and transfers in connection with certain corporate control transactions).<sup>4</sup> Members must have policies and procedures and internal controls in place to enable them to determine whether a transaction qualifies for an exception under the rules.

### B. Amended Rules

FINRA proposed to amend its trade reporting rules to: (1) Clarify the existing exception for transactions that are part of a distribution of securities and impose certain notice requirements on members relying on the exception for transactions that are part of an “unregistered secondary distribution”; and (2) expressly exclude from the trade reporting requirements, transfers of equity securities for the purpose of creating or redeeming instruments such as American Depositary Receipts (“ADRs”) and exchange-traded funds (“ETFs”).

#### 1. Transactions That Are Part of Securities Distribution

FINRA rules contain an exception from the trade reporting requirements

for transactions that are effected in connection with a distribution of securities, specifically:

Transactions that are part of a primary distribution by an issuer or of a registered secondary distribution (other than “shelf distributions”) or of an unregistered secondary distribution.<sup>5</sup>

Thus, transactions that are part of a distribution (other than a secondary shelf distribution) are not reported to FINRA or publicly disseminated, and they are not assessed regulatory transaction fees under Section 3 or the TAF.<sup>6</sup>

FINRA proposed to amend its trade reporting rules to incorporate by reference the definition of “distribution” set forth in SEC Regulation M for purposes of this exception.<sup>7</sup> A “distribution” is defined under Rule 100 of Regulation M as “an offering of securities, whether or not subject to registration under the Securities Act, that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods.”<sup>8</sup>

In addition, FINRA proposed to adopt Supplementary Material in its trade reporting rules that applies specifically to the trade reporting exception for transactions that are part of an “unregistered secondary distribution” which would require members to provide notice to FINRA that they are relying on this exception. Members also would be required to provide FINRA the security name and symbol, execution date, execution time, number of shares, trade price and parties to the trade, for each transaction that is part of the unregistered secondary distribution and not trade reported. Under the proposed rule, members must provide the notice and information no later than three business days following trade date. If the trade executions occur over multiple days, then the member would be required to provide initial notice and information available at that time to FINRA no later than three business days following the first trade date and final notice and information no later than three business days following the last trade date.

<sup>5</sup> See Rules 6282(i)(1)(A), 6380A(e)(1)(A), 6380B(e)(1)(A) and 6622(e)(1)(A).

<sup>6</sup> FINRA explained that this exception was adopted to align the FINRA trade reporting requirements with the Consolidated Tape Association and the Nasdaq Unlisted Trading Privileges plans, which expressly identify transactions that are not required to be reported to the tape. See, *e.g.*, Notice to Members 75–42 (June 1975).

<sup>7</sup> 17 CFR 242.100–105.

<sup>8</sup> 17 CFR 242.100.

The proposed Supplementary Material also would require that the member retain records sufficient to document its basis for relying on this trade reporting exception, including but not limited to, the basis for determining that the transactions are part of an unregistered secondary distribution, as defined under Rule 100 of Regulation M. FINRA explained that members would be required to demonstrate that they have satisfied the “magnitude of the offering” and “special selling efforts” criteria under Regulation M, and stated that the mere assertion that the order was large-sized or a block or that execution of the order was “worked” by a member would usually not by itself be sufficient. FINRA also explained that members must be able to demonstrate that they have complied with the applicable notification requirements in FINRA Rule 5190.<sup>9</sup> The Commission notes that the proposed rule change imposes a notice requirement; it does not impose a trade reporting requirement. As is the case today, under the proposal, transactions that are part of a primary distribution by an issuer or of a registered secondary distribution (other than “shelf distributions”), or of an unregistered secondary distribution, would not be trade reported nor would they be disseminated to the public. In addition, these transactions would not be assessed regulatory transaction fees under Section 3 or the TAF.

The Commission believes that this requirement, as well as the modification to provide a definition of “distribution” for use in connection with the exception, should ensure that members apply the trade reporting exception correctly and should help ensure that members report all transactions that are required to be reported. The Commission specifically notes that large block trades must be reported to FINRA for tape dissemination purposes and are assessed regulatory transaction fees under Section 3 and the TAF. The trade reporting exception does not apply to block trades, unless they otherwise meet the definition of distribution under Regulation M.

#### 2. Transfers of Equity Securities To Create or Redeem Instruments Such as ADRs and ETFs

FINRA also proposed to amend its trade reporting rules to expressly

<sup>9</sup> Rule 5190 imposes certain notice requirements on members participating in distributions of listed and unlisted securities and is designed to ensure that FINRA receives pertinent distribution-related information from its members in a timely fashion in connection with its Regulation M compliance program.

<sup>3</sup> See Securities Exchange Act Release No. 64706 (June 20, 2011), 76 FR 37382 (“Notice”).

<sup>4</sup> See, *e.g.*, Rules 6282(i), 6380A(e), 6380B(e) and 6622(e).

exclude from the trade reporting requirements any transfer of equity securities for the sole purpose of creating or redeeming an instrument that evidences ownership of or otherwise tracks the underlying securities transferred. FINRA explained that such transfers are not considered transactions for purposes of the trade reporting rules and thus are not reportable events.<sup>10</sup> FINRA represented that the proposed rule change codifies current guidance and practice in this area. The Commission believes that this codification of current practice will help reduce confusion with regard to what is required to be reported under FINRA's trade reporting requirements and thus reduce reporting errors.

FINRA stated that the proposed rule change will be effective 90 days following the date of Commission approval.

### III. Commission's Findings

After carefully considering the proposed rule change, the Commission finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association. In particular, the Commission finds that the proposal is consistent with Section 15A(b)(6) of the Act,<sup>11</sup> which requires, among other things, 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.<sup>12</sup>

The Commission believes that the proposal is reasonably designed to clarify the interpretation and application of the current exception from the trade reporting requirements for transactions that are part of a distribution. The Commission believes that the proposal will: (1) Enhance market transparency by helping to ensure that transactions that are not part of an "unregistered secondary distribution," such as large block trades,

are properly reported; and (2) clarify members' obligations with respect to the reporting of transfers of equity securities to create or redeem instruments such as ADRs and ETFs under FINRA trade reporting rules.

In addition, FINRA will receive information regarding transactions that are part of an unregistered secondary distribution which will enhance FINRA's ability to monitor compliance with the securities laws and rules.

### IV. Conclusion

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-FINRA-2011-027), be, and it hereby is, approved.

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

**Elizabeth M. Murphy,**  
*Secretary.*

[FR Doc. 2011-20171 Filed 8-8-11; 8:45 am]

**BILLING CODE 8011-01-P**

### SMALL BUSINESS ADMINISTRATION

#### [Disaster Declaration #12704 and #12705]

#### Tennessee Disaster Number TN-00058

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 1.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Tennessee (FEMA-4005-DR), dated 07/20/2011.

*Incident:* Severe Storms, Straight-line Winds, Tornadoes, and Flooding.

*Incident Period:* 06/18/2011 through 06/24/2011.

*Effective Date:* 08/01/2011.

*Physical Loan Application Deadline Date:* 09/19/2011.

*Economic Injury (EIDL) Loan Application Deadline Date:* 04/20/2012.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Tennessee,

dated 07/20/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Anderson.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2011-20079 Filed 8-8-11; 8:45 am]

**BILLING CODE 8025-01-P**

### DEPARTMENT OF STATE

#### [Public Notice 7544]

#### Announcement of Meeting of the International Telecommunication Advisory Committee

**SUMMARY:** This notice announces a meeting of the International Telecommunication Advisory Subcommittees (ITAC) on August 22, 2011, 10 a.m.–noon EDT, at the Department of State, 2201 C Street, NW., Washington, DC 20520, to seek advice from the telecommunications industry on: (a) The consultation of International Telecommunication Union, Telecommunication Standardization Sector Study Group 15, on whether draft Recommendation G.tp-oam (Operations, Administration and Maintenance mechanism for MPLS-TP in Packet Transport Network (PTN)) should be approved as a policy-level document; and (b) what policy position the United States should take at the December 2011 Study Group 15 meeting on this issue.

This meeting is open to the public as seating capacity allows. The public will have an opportunity to provide comments at this meeting. People desiring further information on this meeting or wishing to request reasonable accommodation may contact the Secretariat at [minardje@state.gov](mailto:minardje@state.gov).

Dated: August 3, 2011.

**Marian R. Gordon,**

*International Communications & Information Policy, U.S. Department of State.*

[FR Doc. 2011-20179 Filed 8-8-11; 8:45 am]

**BILLING CODE 4710-07-P**

<sup>10</sup> FINRA explained, however, that purchases and sales of the securities that are to be transferred for the purpose of creating or redeeming instruments such as ADRs and ETFs and subsequent purchases and sales of the instruments in the secondary market are OTC transactions and must be reported to FINRA in accordance with the trade reporting rules. FINRA also noted that purchases and sales of the underlying securities in order to track the performance of an instrument such as an ADR or ETF, without actually creating the instrument, are trade reportable and that such transactions are subject to regulatory transaction fees under Section 3 and the TAF.

<sup>11</sup> 15 U.S.C. 78o-3(b)(6).

<sup>12</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>13</sup> 15 U.S.C. 78s(b)(2).

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