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SECURITIES AND EXCHANGE COMMISSION  
[Release No. 34-70702; File No. SR-FINRA-2013-044]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Allow FINRA Members to Use the FINRA/NYSE Trade Reporting Facility to Transfer Transaction Fees Charged by One Member to Another Member

October 17, 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 October 9, 2013, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</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 7230B (Trade Report Input) to permit FINRA members to use the FINRA/NYSE Trade Reporting Facility (the “FINRA/NYSE TRF”) to transfer transaction fees charged by one member to another member on trades reported to the FINRA/NYSE TRF.

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

The text of the proposed rule change is available on FINRA's website 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

FINRA Rules 7230A(h) and 7330(i) permit FINRA members to agree in advance to transfer a transaction fee charged by one member to another member on over-the-counter transactions reported to the FINRA/Nasdaq Trade Reporting Facility ("FINRA/Nasdaq TRF") and OTC Reporting Facility ("ORF"), respectively, through the submission of a clearing report.<sup>4</sup> The proposed rule change would adopt a provision that is substantively identical to Rules

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<sup>4</sup> Prior to the adoption of Rules 7230A(h) and 7330(i), there was no mechanism for members to transfer to each other commissions or other explicit transaction fees through the FINRA trade reporting and clearance submission process. Generally, members wanting to transfer to other members an explicit transaction fee were required to either bill and collect those fees directly from the other member outside the transaction reporting and clearing process or trade on a "net" basis (meaning that the broker-dealer's compensation is implicitly included in the execution price disseminated to the tape and reported for clearance and settlement to the National Securities Clearing Corporation ("NSCC")). Rules 7230A(h) and 7330(i), and the proposed rule, provide members with another alternative by permitting the transfer of a transaction fee as part of a clearing report.

7230A(h) and 7330(i) for purposes of transferring transaction fees between members as part of a clearing report submitted to the FINRA/NYSE TRF. Specifically, pursuant to proposed Rule 7230B(i), members would be required to provide in reports submitted to the FINRA/NYSE TRF, in addition to all other information required to be submitted by any other rule, pricing information to indicate a total per share or contract price amount, inclusive of the transaction fee. As a result, members would submit as part of their report to the FINRA/NYSE TRF: (1) Pricing information to indicate a total price inclusive of the transaction fee, which would be submitted by the FINRA/NYSE TRF to NSCC for clearance and settlement; and (2) the price exclusive of the transaction fee, which would be publicly disseminated. For example, if B/D 1 purchases from B/D 2 at \$10.00 and B/D 1 and B/D 2 agree to a transaction fee of \$.001 per share, the trade price that would be publicly disseminated would be \$10.00, while the trade would be cleared and settled by NSCC at \$10.001.<sup>5</sup> The parties to the trade would know both prices – the price reported for public dissemination and the clearance/settlement price.

Proposed Rule 7230B(i) provides that both members and their respective clearing firms, as applicable, must execute an agreement, as specified by FINRA, permitting the facilitation of the transfer of the transaction fee through the FINRA/NYSE TRF, as well as any other applicable agreement, such as a give up agreement pursuant to Rule 6380B(g). Such agreement must be executed and submitted to the FINRA/NYSE TRF before the members can transfer any transaction fee under the proposed rule. Among other things, the form of agreement specified by FINRA would expressly provide that the acceptance and processing by the FINRA/NYSE TRF of the transaction fee as part of a trade report shall not constitute an estoppel as to FINRA or

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<sup>5</sup> If the parties were trading on a net basis with the fee incorporated in the trade price, the transaction at a price of \$10.001 would be reported to the tape and also submitted to NSCC.

bind FINRA in any subsequent administrative, civil or disciplinary proceeding with respect to the transaction fee transferred. In other words, processing of a transaction fee by the FINRA/NYSE TRF should not be taken to mean that FINRA approved that transaction fee or its amount or its appropriateness under FINRA rules or federal securities laws. The mere fact that the transaction fee flowed through a FINRA facility will not be a defense to any action taken by FINRA relating to the fee. The proposed rule also provides that the relevant agreements are considered member records for purposes of Rule 4511 (General Requirements) and must be made and preserved by both members in conformity with applicable FINRA rules.

Furthermore, the proposed rule expressly provides that it shall not relieve a member from its obligations under FINRA rules and federal securities laws, including but not limited to, Rule 2232 (Customer Confirmations) and SEA Rule 10b-10 (Confirmation of Transactions).<sup>6</sup> To the extent that any transaction fee is passed onto the customer, members should review their customer confirmation obligations to ensure that they are disclosing such fees in compliance with all applicable rules and regulations, as well as other FINRA rules, including but not limited to, Rule 5310 (Best Execution and Interpositioning) and NASD Rule 2440 (Fair Prices and Commissions).

FINRA notes that the proposed rule relates solely to transaction fees charged by one FINRA member to another FINRA member. Members would not be able to use the FINRA/NYSE TRF to facilitate the transfer of fees for transactions with a customer (i.e., clients that are not brokers or dealers) or a non-member. In addition, the FINRA/NYSE TRF can only be used to facilitate the transfer of transaction fees. Members would not be able to use the FINRA/NYSE TRF to transfer access fees or rebates on transactions.

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<sup>6</sup> 17 CFR 240.10b-10.

FINRA also is proposing to amend Rule 7230B(d) to require that for any transaction for which the FINRA/NYSE TRF is used to transfer a transaction fee between two members, the trade report must comply with the requirements of proposed Rule 7230B(i). Thus, while use of the FINRA/NYSE TRF to transfer transaction fees between members is voluntary, members that opt to use this service must comply with the requirements of proposed Rule 7230B(i), as well as all other applicable FINRA rules.

FINRA is not proposing to charge FINRA/NYSE TRF participants a fee to use this service at this time.

FINRA has filed the proposed rule change for immediate effectiveness. The operative date of the proposed rule change will be announced in a notice and will be at least 30 days following 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>7</sup> which requires, among other things, that 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. FINRA believes that by automating and improving transaction fee transfers between members as a value-added service, the proposed rule change will enhance market transparency.

### 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 filing will not have an adverse impact on competition because the

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<sup>7</sup> 15 U.S.C. 78o-3(b)(6).

proposed rule change would adopt rules relating to a value-added service, the use of which would be voluntary, for members reporting to the FINRA/NYSE TRF. This service currently is being provided to members reporting to the FINRA/Nasdaq TRF and ORF.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</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.

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires FINRA to give the Commission written notice of FINRA's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has satisfied this requirement.

#### 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-FINRA-2013-044 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-2013-044. 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 website (<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 website 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 10:00 a.m. and 3:00 p.m. Copies of such 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-2013-044 and should be submitted on or before [INSERT DATE 21 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

Kevin M. O'Neill,  
Deputy Secretary.

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<sup>10</sup> 17 CFR 200.30–3(a)(12).