

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 Exchange believes that its proposal to expand Rule 4626 (Limitation of Liability) under specified circumstances will promote fairness in the market place in situations where the firm's claim results from a problem in a compliance function performed by the Exchange's trading system that is solely the fault of the Exchange.<sup>10</sup>

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

NASDAQ 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.

#### *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>11</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>12</sup> The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will

<sup>10</sup> This would include events like the one on Monday, April 25, 2011 involving a quoting problem with the Exchange's automated quotation refresh system (AQR). Because the claim for redress for trades impacted by this AQR problem does not arise until settlement, claims timely filed from this event will be eligible for review pursuant to proposed Rule 4626(b)(2).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its 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 filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has requested that the Commission waive the five business day notice requirement. The Commission waives the five day notice requirement.

allow the Exchange to immediately expand Rule 4626 to help promote fairness in the marketplace in specified circumstances where claims result from systems malfunctions or errors that are solely the fault of the Exchange.<sup>13</sup> Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing with the Commission.

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.

### **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-NASDAQ-2011-058 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-NASDAQ-2011-058. 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

<sup>13</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 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 publicly available. All submissions should refer to File Number SR-NASDAQ-2011-058 and should be submitted on or before May 25, 2011.

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

**Cathy H. Ahn,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-64364; File No. SR-FINRA-2011-012]

### **Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of a Proposed Rule Change Relating to TRACE Reporting of Asset-Backed Securities**

April 28, 2011.

#### **I. Introduction**

On March 3, 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 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change related to Trade Reporting and Compliance Engine ("TRACE") reporting of Asset-Backed Securities. The proposed rule change was published for comment in the **Federal Register** on March 21, 2011.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

<sup>14</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> See Securities Exchange Act Release No. 64084 (March 16, 2011), 76 FR 15352 ("Notice").

## II. Description of the Proposal

In February 2010, the Commission approved FINRA's proposal to amend the FINRA Rule 6700 Series to define "Asset-Backed Securities" as TRACE-Eligible Securities, thereby subjecting members to the requirement to report transactions in such securities to TRACE.<sup>4</sup> The proposal is to become effective on May 16, 2011.<sup>5</sup> In the current proposed rule change, FINRA proposes additional amendments to the FINRA Rule 6700 Series and FINRA Rule 7730 to prepare for the reporting of Asset-Backed Securities transactions to TRACE. The proposed rule change amends or supplements the TRACE reporting and other requirements that will apply to Asset-Backed Securities transactions. Specifically, the proposed rule change would:

(1) In FINRA Rule 6710, clarify, simplify, or conform the defined terms "TRACE-Eligible Security," "Reportable TRACE Transaction," "Agency Debt Security," "Asset-Backed Security" and "TRACE System Hours"; add the defined term, "Securitizer"; and delete the defined terms "Sponsor" and "Issuing Entity";

(2) In FINRA Rule 6730, (A) revise, renumber, and conform the text of parallel reporting provisions in FINRA Rule 6730(a); (B) incorporate minor amendments regarding the duration and expiration of the pilot program for reporting Asset-Backed Securities transactions ("Pilot Program"); (C) consolidate reporting requirements for Asset-Backed Securities transactions that are executed other than during TRACE System Hours; (D) simplify how settlement is reported for Asset-Backed Securities transactions; (E) add alternative reporting requirements for Asset-Backed Securities transactions that are collateralized mortgage obligation ("CMO") or real estate mortgage investment conduit ("REMIC") transactions that occur prior to the issuance of the CMO or REMIC ("pre-issuance CMOs/REMICs"); and (F) add new FINRA Rule 6730(a)(6) to clarify a member's obligation to provide information to FINRA Operations regarding a TRACE-Eligible Security when such security is not in the TRACE system, and to incorporate other minor

<sup>4</sup> See Securities Exchange Act Release No. 61566 (February 22, 2010), 75 FR 9262 (March 1, 2010). This proposed rule change also amended FINRA Rule 7730 to establish fees for reporting transactions in Asset-Backed Securities.

<sup>5</sup> See Securities Exchange Act Release No. 63223 (November 1, 2010), 75 FR 68654 (November 8, 2010) (Notice of Filing and Immediate Effectiveness of SR-FINRA-2010-054 to Extend the Implementation Period for SR-FINRA-2009-065); *Regulatory Notice* 10-55 (October 2010).

technical or clarifying amendments to the Rule;

(3) In FINRA Rule 6760, incorporate requirements that apply to Securitizers of Asset-Backed Securities, alternative notification requirements for pre-issuance CMOs/REMICs, and minor technical, conforming, or clarifying changes; and

(4) In FINRA Rule 7730, add the Financial Information eXchange ("FIX") as a method to report transactions to TRACE, establish a system-related FIX fee, and incorporate a minor technical amendment.

## III. Discussion and 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.<sup>6</sup> In particular, the Commission finds that the proposal is consistent with 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. The Commission believes that the proposal clarifies the standards for reporting Asset-Backed Securities, will assist FINRA by supporting more timely and accurate reporting to TRACE of transactions in Asset-Backed Securities and enhance FINRA's surveillance of the debt market in connection with Asset-Backed Securities transactions for the protection of investors and in furtherance of the public interest.

The Commission further finds that the proposal to add to Rule 7730 a fee for reporting transactions in Asset-Backed Securities via FIX is consistent with Section 15A(b)(5) of the Act, which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees, and other charges among members, issuers, and other persons using any facility or system that FINRA operates or controls.<sup>8</sup> The fee is similar to the Computer-to-Computer Interface ("CTCI") fee that currently is assessed to members that elect to report transactions in TRACE-Eligible Securities to TRACE via a CTCI line.

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

<sup>8</sup> 15 U.S.C. 78o-3(b)(5).

## IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-FINRA-2011-012), be, and hereby is, approved.

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

**Cathy H. Ahn,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64362; File No. SR-EDGA-2011-13]

### Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Pilot Period of the Inbound Router, as described in EDGA Rule 2.12(b)

April 28, 2011.

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 April 20, 2011, EDGA Exchange, Inc. (the "Exchange" or "EDGA") 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 Exchange. 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 Exchange proposes to extend the pilot period of the Exchange's inbound router, as described in Rule 2.12(b), so that the Exchange can receive inbound routes of equities orders through DE Route, the Exchange's routing broker dealer, from EDGX Exchange, Inc. ("EDGX"). The text of the proposed rule change is attached as Exhibit 5 and is available on the Exchange's Web site at <http://www.directedge.com>, at the Exchange's principal office, and at the Public Reference Room of the Commission.

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</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.