and professional engagement period'' is defined to include two discrete periods of time. The ''audit period'' is the period covered by any financial statements being audited or reviewed.[2] The ''professional engagement period'' is the period beginning when the firm either signs the initial engagement letter or begins audit procedures, whichever is earlier, and ends when either the company or the firm notifies the SEC that the company is no longer that firm's audit client.[3]

On April 3, 2007, the Board issued a concept release to solicit comment about the possible effect on a firm's independence of providing tax services to a person covered by Rule 3523 during the portion of the audit period that precedes the beginning of the professional engagement period and other practical consequences of applying the restrictions imposed by Rule 3523 to that portion of the audit period.[4] The Board also adjusted the implementation schedule for Rule 3523, as it applies to tax services provided during the period subject to audit but before the professional engagement period.[5]

On July 24, 2007, the Board proposed an amendment to Rule 3523 to exclude the portion of the audit period that precedes the beginning of the professional engagement period, as well as a new ethics and independence rule regarding communication with audit committees, and further adjusted the implementation schedule for Rule 3523 to allow sufficient time for consideration of commenters' views.[6] After considering commenters' views, the Board adopted the amendment on April 22, 2008.[7]

The Board has determined to further adjust the implementation schedule for Rule 3523 to allow sufficient time for the SEC to consider whether to approve the amendment to Rule 3523. Specifically, the Board will not apply Rule 3523 to tax services provided on or before December 31, 2008, when those services are provided during the audit period and are completed before the professional engagement period begins.[8]

(b) Statutory Basis

The statutory basis for the proposed rule change is Title I of the Act.

B. Board's Statement on Burden on Competition

The Board 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. Board's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Board did not solicit or receive written comments on the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 (as incorporated, by reference, into Section 107(b)(4) of the Act) and paragraph (f) of Rule 19b–4 thereunder because of its designation by the PCAOB as ''constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.'' At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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 requirements of Title I of 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/pcaob.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number PCAOB–2008–02 on the subject line.

Paper Comments

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

All submissions should refer to File Number PCAOB–2008–02. 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/pcaob/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes 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 Section, 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 PCAOB. All comments received will be posted without change; we do 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 PCAOB–2008–02 and should be submitted on or before June 23, 2008.

By the Commission.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–12162 Filed 5–30–08; 8:45 am]

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[2] Rule 3501(a)(iii)(1).

[3] Rule 3501(a)(iii)(2).

[4] *See* PCAOB Release No. 2007–002 (Apr. 3, 2007).

[5] *See id.*, at 7. Specifically, the Board stated that it would not apply Rule 3523 to tax services provided on or before July 31, 2007, when those services are provided during the audit period and are completed before the professional engagement period begins.

[6] *See* PCAOB Release No. 2007–008 (July 24, 2007). Specifically, the Board stated that it would not apply Rule 3523 to tax services provided on or before April 30, 2008, when those services are provided during the audit period and are completed before the professional engagement period begins.

[7] *See* PCAOB Release No. 2008–003 (Apr. 22, 2008).

[8] This will apply regardless of whether there is an engagement in process on April 30, 2008.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57866; File No. SR–FINRA–2007–026]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change as Modified by Amendment No. 1 Thereto To Adopt a FINRA Policy To Expand Disseminated Trade Reporting and Compliance Engine (''TRACE'') Data

May 23, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 5, 2007, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) [3] filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. On May 20, 2008, FINRA filed Amendment No.1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt a FINRA policy to expand disseminated Trade Reporting and Compliance Engine (''TRACE'') data to show, for each disseminated transaction, that the transaction is an inter-dealer transaction (''Dealer Transaction'') or a transaction with a customer (''Customer'') (''Customer Transaction'') and the member referenced is a buyer (''Buyer'') or a (''Seller'') (or acts as agent on the buy or the sell side). The proposed rule change does not include proposed rule text.

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

Currently, FINRA members that are parties to a transaction in a TRACE-eligible security report several types of information to the TRACE System. Among the elements of data that are reported, for each transaction the member reports that it is a Buyer from a broker-dealer (''Dealer'') or a Customer or a Seller to a Dealer or a Customer (or acts as agent on the buy or the sell side).[4] In addition, the member reports that the transaction is a Dealer Transaction or a Customer Transaction. Currently, these data elements are not included in the TRACE transaction data disseminated immediately upon FINRA's receipt of a transaction report.

The data elements that are disseminated include: the bond identifier (*i.e.*, the TRACE symbol); the price inclusive of any mark-up, mark-down, or commission; the quantity (expressed as the total par value); the yield; the time of execution; and, if the transaction were executed on a day other than when TRACE data is being disseminated, the actual day of execution of the transaction.

For a Dealer Transaction, FINRA receives a TRACE report from each Dealer, but disseminates data reflecting only the information received in the Sell transaction report. For a Customer Transaction, only one side of the trade has to be reported—the Dealer (or Dealers) side—and FINRA disseminates the data from the TRACE report(s), which may be either a Dealer's Buy or a Dealer's Sell.

FINRA is proposing that additional data elements showing the side on which a Dealer acts in a transaction (''Buy/Sell data element'') and the information identifying the transaction as a Dealer Transaction or a Customer Transaction (''Dealer/Customer data element'') (but not the MPID or identity of any Dealer) be disseminated publicly for each transaction, because Dealers need access to these additional data elements and investors would benefit from this enhanced level of transparency. Dealers need the additional data elements to compare prices, and in order to comply with their best execution obligations under NASD Rule 2320, the fair and reasonable mark-up/mark-down requirements under NASD Rule 2440, NASD IM–2440–1, NASD IM–2440–2, and other provisions of the federal securities laws.[5] Investors would benefit from the dissemination of these additional data elements by being able to compare prices and request better, lower prices. Given the limited occurrence of transactions in certain sectors of the debt markets, including the corporate debt sector, FINRA believes that the Dealer/Customer data element and Buy/Sell data element should be added to the disseminated TRACE data to provide TRACE users additional clarity about what each disseminated TRACE price actually represents.

The disseminated TRACE data enhanced by the addition of the Dealer/Customer data element and the Buy/Sell data element will inform Dealers and Customers of actual executed prices for Customer Transactions and Dealer Transactions across a broad universe of corporate debt securities. Even prior to the adoption of NASD IM–2440–2, ''Additional Mark-Up Policy For Transactions in Debt Securities, Except Municipal Securities'' (''the Debt Mark-Up Interpretation''), the availability of these data elements would have aided Dealers in complying with their obligations regarding best execution and fair mark-ups set forth in FINRA rules and other provisions of the federal securities laws, and described in various litigated or settled proceedings.[6] With the implementation of the Debt Mark-Up Interpretation on July 5, 2007, FINRA believes that the data elements identifying a transaction as either a Dealer Transaction or a Customer

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

[2] 17 CFR 240.19b–4.

[3] Effective July 30, 2007, FINRA was formed through the consolidation of NASD and the member regulatory functions of NYSE Regulation, Inc. Generally, pre-consolidation actions by NASD are referred to as FINRA actions, except for NASD Rules, when referenced singularly, and NASD *Notices to Members*. When FINRA files proposed rule changes to create a consolidated FINRA rule manual, such NASD rules and interpretations, as incorporated in the consolidated FINRA Manual, will no longer be referred to as ''NASD'' rules.

[4] Hereinafter, ''Buy'' means either or both (i) a Dealer's purchase of a security from a Customer, and/or (ii) a Dealer, as agent of a Customer, facilitating a purchase of a security from the Customer; similarly, ''Sell'' means either or both (i) a Dealer's sale of a security to a Customer, and/or (ii) a Dealer, as agent of a Customer, facilitating a sale of a security to the Customer.

[5] When a member charges a Customer an excessive or unreasonable mark-up/mark-down, the member violates NASD Rule 2110, NASD Rule 2440, NASD IM–2440–1, and, if charged in a debt securities transaction, NASD IM–2440–2. In addition, in some cases, when a member charges an excessive or unreasonable mark-up/mark-down and does not fully disclose it to the customer, the member may be in violation of Section 10(b) of the Act, 15 U.S.C. 78j(b), and Rule 10b–5 thereunder, 17 CFR 240.10b–5, or Section 17(a) of the Securities Act of 1933, 15 U.S.C. 77q(a). NASD Rule 2320, NASD Rule 2110, NASD Rule 2440, NASD IM–2440–1, and NASD IM–2440–2 do not apply to transactions in municipal securities. Instead, when a Dealer or a municipal securities dealer engages in a municipal securities transaction, the rules of the Municipal Securities Rulemaking Board (''MSRB'') apply. *See, e.g.*, MSRB Rule G–30, Prices and Commissions; MSRB Rule G–18, Execution of Transactions.

[6] NASD IM–2440–2 was approved by the SEC on April 16, 2007, and became effective on July 5, 2007. *See* Securities Exchange Act Release No. 55638 (April 16, 2007), 72 FR 20150 (April 23, 2007) (order approving SR–NASD–2003–141); NASD *Notice to Members* 07–28 (June 2007).

Transaction and as either a Buy or a Sell now must be made available to Dealers.

Under the Debt Mark-Up Interpretation, when a Dealer is pricing or determining mark-ups (or mark-downs) by referring to recent transaction prices other than the Dealer's own price, a Dealer must be able to determine if a trade is an inter-dealer transaction (as used in the Debt Mark-Up Interpretation) or a Customer Transaction.[7] In addition, the Dealer must be able to determine which side of the market a Dealer traded from, whether looking to a Customer Transaction or an inter-dealer transaction (as used in the Debt Mark-Up Interpretation).[8] Disseminating the Dealer/Customer and the Buy/Sell data elements would allow Dealers to more accurately identify the type of pricing information disseminated by TRACE, and would permit them to use the information to comply with FINRA rules and the federal securities laws regarding fair prices and best execution.

In view of the fact that Customer Transaction prices disseminated are ''all-in prices,'' and the prices of Customer Transactions and Dealer Transactions are intermingled, the dissemination of data elements that identify transactions as Customer Transactions or Dealer Transactions will allow all who view the TRACE data to distinguish those transactions that do not include a mark-up/mark-down or a commission—Dealer Transactions—from transactions displayed as ''all-in prices'' that include Dealer mark-ups/mark-downs or commissions—Customer Transactions.

By adding the Buy/Sell data element to any transaction identified as a Customer Transaction, anyone viewing the TRACE data will be able to determine that, in the case of a Buy, the disseminated price includes a mark-down or a commission, or, in the case of a Sell, the disseminated price includes a mark-up or a commission. Thus, with the two additional elements viewable in disseminated TRACE data, Customers that are TRACE data users will be able to knowledgeably assess and compare the disseminated ''all-in price'' of their purchases and sales with other Customer Transactions. In addition, Dealers will be able to determine approximate levels of Dealer Transaction pricing by ''backing out'' of a disseminated ''all-in price'' clearly labeled as a Customer Transaction, a mark-up (or mark-down) or commission amount if Dealer Transaction pricing is not available in TRACE for the Dealer's analyses of its mark-up (or mark-down) and its compliance with best execution obligations.

Such transparency exists in other markets. The Municipal Securities Rulemaking Board (''MSRB'') determined that disseminating buy/sell and dealer/customer information was an important element of transparency in the municipal securities market, and currently disseminates both of these data elements real-time together with other price, quantity, and yield information per transaction.[9] FINRA believes it is appropriate to provide comparable data to TRACE data users.

Finally, debt pricing, particularly debt mark-ups, remains an area of regulatory concern and focus.[10] For more than two years, FINRA has considered incorporating the Dealer/Customer data element and Buy/Sell data element in disseminated TRACE transaction data to aid Dealers in improving their pricing of TRACE-eligible securities and similar debt securities; and to provide them with information to evidence their adherence to the requirements of the federal securities laws and regulations regarding fair pricing and best execution. In 2005, FINRA staff began receiving requests that these reported data elements be included in the disseminated TRACE data from members attending FINRA seminars discussing debt mark-ups. Also, in April 2005, when NASD IM–2440–2 was pending as a proposed rule change, a commenter highlighted the deficiencies in disseminated TRACE data, noting that TRACE data did not differentiate between Customer Transactions and Dealer Transactions, thus making Dealer compliance with the various requirements of NASD IM–2440–2 difficult (*e.g.*, the identification and required use, in certain cases, of certain Dealer Transaction prices to establish prevailing market price).[11] In October 2005, in FINRA's response to comments, FINRA indicated that FINRA was ''evaluating enhancing the quality of disseminated TRACE information to show, for each trade, whether the trade is inter-dealer or customer, as is now indicated in real-time disseminated municipal securities transaction

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[7] In IM–2440–2, the Debt Mark-Up Interpretation, references to ''inter-dealer trades'' or ''inter-dealer transactions'' (that, in certain circumstances, must or may be used to determine the prevailing market price of a security—whether in the same or similar securities as the security for which a mark-up is being calculated) *do not include* any inter-dealer transaction in which the Dealer that is determining prevailing market price is a party. In contrast, in this proposed rule filing, the term ''inter-dealer transaction'' (defined as ''Dealer Transaction'') includes all inter-dealer transactions (*e.g.*, if Dealer A is a party to an inter-dealer transaction, from Dealer A's perspective, inter-dealer transactions means all inter-dealer transactions, including those to which Dealer A is a party). In this note 7 and note 8, *infra*, when describing various provisions of the Debt Mark-Up Interpretation, FINRA uses the term ''inter-dealer transaction'' to make clear that FINRA means inter-dealer transactions as used in the Debt Mark-Up Interpretation. *See* IM–2440–2, paragraph (b)(5)(A) (requiring that a Dealer must consider—after considering the Dealer's own contemporaneous cost (or proceeds)—the prices of any *contemporaneous inter-dealer transaction in the same security* to determine prevailing market price). *See also* NASD IM–2440–2, paragraph (b)(5)(B) (requiring that a Dealer must consider—after considering the Dealer's own contemporaneous cost (or proceeds) and the prices of any *contemporaneous inter-dealer transactions in the same security*—the prices of contemporaneous Dealer purchases (sales) in the security in question from (to) institutional accounts with which any Dealer regularly effects transactions in the same security (''certain institutional accounts'') to determine prevailing market price); NASD IM–2440–2, paragraph (b)(6) (referring to a Dealer's review, in certain circumstances, of the pricing information from (i) *contemporaneous inter-dealer transactions in a similar security*, and (ii) contemporaneous Dealer purchase (sale) transactions in a similar security with certain institutional accounts, as part of the Dealer's analysis to determine the prevailing market price of a particular security).

[8] For example, under NASD IM–2440–2, paragraph (b)(6), when a Dealer refers to transactions in similar securities, a Dealer must know the side of the market (*i.e.*, Buy or Sell information) to determine the relative comparability of a transaction in a similar security to the transaction that is being marked.

[9] Disseminated municipal securities transaction prices, like TRACE-disseminated prices, are ''all-in prices.''

[10] In remarks to the securities industry, senior SEC staff has indicated that debt mark-ups are an area of regulatory concern and focus. *See, e.g.*, Remarks before the TBMA Legal and Compliance Conference, Commissioner Annette L. Nazareth, SEC, New York, NY, February 7, 2006 (''[The industry] should consider improving transparency concerning dealer mark-up policies * * * Investors should understand what they are paying, whether the broker is acting as agent or principal, and whether the price paid includes compensation to the broker-dealer, and if so, how much.'') at *http://www.sec.gov/news/speech/spch020706aln.htm;* Remarks to The SIFMA Legal and Compliance Division, ''The Regulatory Focus on Broker-Dealer Legal and Compliance Issues,'' Mary Ann Gadziala, Associate Director, Office of Compliance Inspections and Examinations, SEC, Chicago, Ill., June 7, 2007 (listing mark-ups on fixed income securities as an examination priority), at *http://www.sec.gov/news/speech/2007/spch060707mag.htm*. FINRA acknowledges that the Commission, as a matter of policy, disclaims responsibility for any private publications or statements by any of its employees, and that the views expressed in the remarks referenced above are those of the speaker and do not necessarily reflect the views of the Commission, another Commissioner, or the Commission staff.

[11] *See* File No. SR–NASD–2003–141. Letter from The Bond Market Association (regarding File No. SR–NASD–2003–141), to Jonathan G. Katz, Secretary, SEC, dated April 5, 2005 at 13 (''[T]he NASD's TRACE system does not differentiate between inter-dealer trades and customer trades in its disseminated reports, making the identification of an inter-dealer trade difficult.''). FINRA also published the proposed change of policy regarding TRACE disseminated data in NASD *Notice to Members* 06–22 (May 2006). The comments received in connection with the proposal at that time are summarized below in Item 5.

data.'' [12] By adding the Dealer/Customer data element and Buy/Sell data element to TRACE disseminated information now, Customers and Dealers would be able to more accurately and carefully assess the quality of the pricing of their corporate bond transactions.

FINRA would announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval, if the Commission approves the proposal. The effective date would be no later than 120 days following publication of the *Regulatory Notice* announcing a Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[13] 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. FINRA believes that the proposed policy, by improving the quality of information available to institutional investors, retail investors, and Dealers: (i) Will allow them to compare prices in TRACE-eligible securities transactions more meaningfully; (ii) will allow them to negotiate transaction prices with more information; (iii) will allow Dealers to comply more easily with FINRA rules and various provisions of the federal securities laws requiring Dealers to buy or sell debt securities at prices related to the prevailing market prices, adjusted by a fair and reasonable mark-up (mark-down) or commission, which provisions are designed to prevent unfair or unjust practices, or fraudulent, deceptive, and manipulative acts or practices in the pricing of securities transactions; and (iv) may stimulate price competition among Dealers, for the protection of investors and in furtherance of the public interest.

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

FINRA does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

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

The proposed rule change was published for comment in NASD *Notice to Members* 06–22 (May 2006). Five comments were received in response to the NASD *Notice to Members*. Of the five comment letters received, two commenters were in favor of the proposed rule change [14] and three commenters were opposed.[15]

Two of the commenters indicated that they fully supported the proposed public disclosures of the Buy/Sell data element and Dealer/Customer data element because: (i) Lack of disclosure of pertinent bond information places the public investor at a disadvantage; (ii) both public investors and Dealers need such pricing information, which will permit them to compare prices meaningfully; (iii) Dealers need the additional data elements to comply with best execution and mark-up requirements; (iv) the data disseminated for municipal securities transactions already includes these data elements and the inclusion of such information plays an important role in providing transparency in the municipal securities markets; (v) companies claiming that their bond trading strategies would be exposed have not substantiated such claims; (vi) corporate debt market participants, including Dealers, will not be unduly burdened by dissemination of the additional data elements; and (vii) the benefit to the public investor and the participating TRACE Dealers will outweigh any negative impact to the market, Dealers, or Customers, including certain companies' position that possibly smaller profit margins for Dealers may result if these additional elements of TRACE data are disseminated. One of the commenters requested that, if the policy were adopted, members be given 12 months to adopt any necessary systems changes.[16]

Three commenters opposed the proposed policy change. The three commenters stated that Dealers did not need the Dealer/Customer data element and Buy/Sell data element to comply with best execution and mark-up/mark-down rules and the federal securities laws, and that the liquidity of the corporate bond market ''could be'' substantially reduced because, if the disseminated TRACE data included the additional information, it would limit a Dealer's ability to execute trades without having the market move adversely.

Two commenters submitted nearly identical comments summarized below.[17] Generally, both commenters opposed the Proposal stating, in addition to the comments summarized immediately above, that the proposed dissemination of the two additional data elements would not facilitate price transparency, and the information currently disseminated through TRACE is sufficient for investors to determine if they receive fair prices from dealers. The commenters posited that the Dealer/Customer and Buy/Sell data elements, if published, would hamper the ability of investors trying to accumulate or dispose of positions without moving the market (as noted above) and would: (i) Permit market participants to discern the trading intent of others and consequently trade in a manner that is harmful to the identified investor; (ii) permit others to intrude upon the trading strategies of an investor; (iii) increase investor costs; and (iv) as noted above, potentially reduce liquidity. In addition, the commenters stated that FINRA does not need to implement the Proposal to further its audit and surveillance functions and ''the Proposal should be effected only to the extent that investors and dealers determine there is a need for it.'' [18] Further, although the inclusion of Dealer/Customer and Buy/Sell data elements in disseminated municipal securities transaction information does not appear to be harmful to the municipal securities market, the commenters stated that such information would have an adverse impact in the corporate bond market (particularly to institutional traders and Dealers) and should not be disseminated.

The two commenters focused on the trading patterns of institutional

[12] *See* File No. SR–NASD–2003–141. Response to Comments on Additional Mark-Up Policy for Transactions in Debt Securities (regarding File No. SR–NASD–2003–141), to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated October 4, 2005 at 13.

[13] 15 U.S.C. 78o–3(b)(6).

[14] *See* letters from Kenneth M. Cherrier, Chief Compliance Officer, Fintegra, to Barbara Z. Sweeney, Office of Corporate Secretary, NASD, dated June 1, 2006; and Bari Havlik, Senior Vice President, Global Compliance, Charles Schwab & Co., Inc. to Sharon K. Zackula, Associate General Counsel, Office of General Counsel, NASD, dated June 15, 2006 (''Schwab Letter'').

[15] *See* letters from Brad Ziemba, Chief Compliance Officer, Duncan-Williams, Inc, to Barbara Z. Sweeney, Office of Corporate Secretary, NASD, dated June 26, 2006; Mary C.M. Kuan, Vice President and Assistant General Counsel, The Bond Market Association (''TBMA''), to Barbara Z. Sweeney, Office of Corporate Secretary, NASD, dated June 16, 2006 (''TBMA Letter''); and John R. Gidman, Chairman, Asset Managers Division, TBMA, to Barbara Z. Sweeney, Office of Corporate Secretary, NASD, dated June 19, 2006 (''TBMA–AMD Letter'').

[16] *See* Schwab Letter.

[17] *See generally* TBMA Letter; TBMA–AMD Letter.

[18] TBMA Letter at 2; TBMA–AMD Letter at 2.

customers, their block trades of bonds, and their reliance on Dealers to facilitate trading in such blocks—by acting as a riskless principal, by taking the other side of the Customer's trade (a risk position), or by the Dealer selling bonds short to facilitate the institutional Customer's purchase and thereafter going out into the market to cover the short (a Dealer short position) in which, the commenters noted, Dealers take on considerable risk.[19] The commenters stated that such investors must be able to execute block trades and Dealers must be able to facilitate such trades without signaling the market because prices in the securities market are driven by supply and demand and, if an institutional investor or a Dealer tries to sell, or facilitate the sale of, a block without having the ability to shroud its activity, it might cost more. In addition, other market participants might try to raise prices, by buying some of the desired bonds, or conversely, might try to lower prices, by selling some of the desired bonds. The commenters stated that transactions might cost more and other institutional market participants and the public might be able to free-ride on the research and strategies of an institution or a Dealer. Moreover, the higher costs of trades and free-riding costs might flow downstream to the retail Customers of institutional investors. In addition, the commenters alleged that the proposal to disseminate the Dealer/Customer data element and Buy/Sell data element ''would undermine such institutional investors' fiduciary responsibilities to their customers to maintain policies and procedures to prevent misuse of their trading strategies.'' [20]

Finally, the two commenters argued that the practice of disseminating dealer/customer and buy/sell data elements for transactions in municipal securities should not be adopted in TRACE because the corporate bond market is ''sufficiently distinct from the municipal bond market'' and such information would hinder corporate bond Dealers and their Customers. They asserted that generally municipal bonds trade less frequently, there is less trading in blocks by municipal bond dealers and large institutional customers, and municipal bond dealers do not take short positions to facilitate municipal securities customer trades, in contrast to corporate bond Dealers. Thus, with fewer large block trades and fewer short positions held by municipal bond dealers, the overall risk from one or more trades (for which information is known in the market) moving the price against the trading party's economic interests is significantly lower in the municipal market (*i.e.*, because such large trades are infrequent).

The two commenters also requested access to empirical data on TRACE to study the market.

FINRA has considered the comments fully and carefully and continues to believe that the dissemination of the Dealer/Customer data element and Buy/Sell data element should occur to provide important information to Customers and Dealers about current pricing, to permit a meaningful comparison of prices, and to allow Dealers to comply with fair pricing and best execution obligations. Further, FINRA is not persuaded by those commenters who are opposed to the Proposal. None of the opposing comments voice any supportable proposition that the information benefit to TRACE data users can otherwise be obtained without the disclosure of the proposed information or that compliance with NASD IM–2440–2 is possible without the disclosure of the information since there is no other way to divine the necessary data elements or to use any price other than contemporaneous price from which the mark-up or mark-down is to occur. Finally, FINRA does not understand how the dissemination of the Buy/Sell and Dealer/Customer data elements adds materially to any quantum of information that exacerbates the potential for the ''reverse engineering'' of trading interest and strategies in comparison to the ability to divine such information today with the mix of TRACE information presently disseminated. Presumably, there are people reading the disseminated information today who, from such information, make calculated assumptions about the nature and quantity of debt securities for sale, trading strategies, and the identity of the beneficial interests behind such sales or strategies. The question not answered by the commenters is how the addition of a data element identifying either Buy/Sell or Dealer/Customer information adds material content that, in fact, aids in the ability to make such calculations more accurately. Stated another way, it is unclear how, even with these data elements added to the TRACE data already disseminated, a consumer of disseminated information will know who is behind a trade, the nature and extent of its strategy, and the size of the total debt position being disposed of or acquired. In any event, FINRA does not believe that those contentions, even if they could be established, trump the basis for the Proposal with its legitimate purposes under the Act and its necessary purposes under NASD IM–2440–2.

Finally, in response to the two commenters' request for empirical data on TRACE to study the market, FINRA proposed to provide access to historic TRACE data in SR–FINRA–2007–006, which was filed with the Commission on August 9, 2007, and published for notice and comment on September 10, 2007.[21] The proposal is currently pending before the Commission.

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.* Please include File Number SR–FINRA–2007–026 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–FINRA–2007–026. This file number should be included on the subject line if e-mail is used. To help the

[19] The terms riskless principal, risk position, and Dealer short position are the terms and characterizations of the commenters. *See generally* TBMA Letter; TBMA–AMD Letter.

[20] TBMA Letter at 4; TBMA–AMD Letter at 4.

[21] *See* Securities Exchange Act Release No. 56327 (August 28, 2007), 72 FR 51689 (September 10, 2007) (notice of filing of SR–FINRA–2007–006 and request for comment).

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, 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 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–2007–026 and should be submitted on or before June 23, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–12161 Filed 5–30–08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57873; File No. SR–NASDAQ–2008–044]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To Amend Nasdaq Rule 4420(g)

May 27, 2008.

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 May 13, 2008, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') 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 substantially by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is granting accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend Nasdaq Rule 4420(g) for the purpose of adding new text clarifying that securities listed under the rule are done so pursuant to Rule 19b–4(e) of the Act.[3] Nasdaq also proposes to remove the maximum term limitation set forth in the rule and to allow securities listed under the rule to be based on multiple underlying securities. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nasdaq.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Nasdaq 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

Nasdaq proposes an amendment to Nasdaq Rule 4420(g) to clarify that Selected Equity-linked Debt Securities (''SEEDS'') listed on the Nasdaq Global Market are listed pursuant to Rule 19b–4(e) of the Act.[4] Rule 19b–4(e) allows self-regulatory organizations (''SROs'') to, among other things, list and trade new derivative securities products without going through the rule change process under Section 19(b) of the Act.[5] Specifically, Rule 19b–4(e) provides that the listing and trading of derivatives securities products is not deemed a proposed rule change under Rule 19b–4(c)(1). To qualify for this exemption from Rule 19b–4(c)(1), an SRO must have existing, Commission-approved trading rules, procedures, and listing standards for the product class that would include the new derivative securities product. In addition, the SRO must have a surveillance program for the product class.

Nasdaq adopted its listing rules for SEEDS in 1994,[6] prior to the Commission's amendment to Rule 19b–4 of the Act, which added paragraph (e) and its exemption from the Section 19(b) rule change filing requirement. Subsequent to the Commission's amendment of Rule 19b–4 in 1998,[7] Nasdaq did not amend its rule relating to the listing of SEEDS to clarify that such securities are considered derivative securities products and, as such, may be listed and traded without submitting a proposed rule change under Section 19(b). Nasdaq has adopted listing rules for derivative securities products subsequent to the Commission's adoption of the 1998 amendment to Rule 19b–4(e) that specifically note that such listing is pursuant to Rule 19b–4(e).[8] Accordingly, Nasdaq is filing this rule change proposal to make clear in its rules that SEEDS listed under Rule 4420(g) are done so pursuant to Rule 19b–4(e) of the Act.

Nasdaq is also proposing to amend 4420(g) to conform the rule to the analogous rule of the American Stock Exchange LLC (''Amex'').[9] Nasdaq notes that Amex requires its Equity Linked Term Notes to have only a minimum term of one year, with no maximum term limit;[10] however, Nasdaq limits SEEDS based on a domestic security to a term of one to seven years, and limits SEEDS based on a non-U.S. security or sponsored ADR to a maximum term of three years.[11] Amex's listing rules also allow Equity Linked Term Notes to be linked up to thirty underlying equity securities if all of the underlying equity securities individually satisfy the applicable listing standards. As such, Nasdaq is proposing to allow SEEDS to be listed on up to thirty equity securities and have only a minimum term of one year, with no maximum term.

[22] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(e).

[4] *Id.*

[5] 15 U.S.C. 78s(b)(1).

[6] Securities Exchange Act Release No. 34758 (September 30, 1994), 59 FR 50943 (October 6, 1994), (SR–NASD–94–49).

[7] Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998), (File No. S7–13–98).

[8] *See e.g.*, Securities Exchange Act Release No. 45920 (May 13, 2002), 67 FR 35605 (May 20, 2002) (SR–NASD–2002–45).

[9] Section 107B of the Amex Company Guide.

[10] Like the Amex, The New York Stock Exchange also requires equity-linked debt securities to have only a minimum term of one year, with no maximum term. *See* Paragraph 703.21 NYSE Listed Company Manual.

[11] Rule 4420(g)(2)(D).