

OMB APPROVAL

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. SR - 2007 - 031

Amendment No. 3

Proposed Rule Change by National Association of Securities Dealers

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial <input type="checkbox"/>	Amendment <input checked="" type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) <input checked="" type="checkbox"/>	Section 19(b)(3)(A) <input type="checkbox"/>	Section 19(b)(3)(B) <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action <input type="checkbox"/>
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<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>

Description

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name	Lisa	Last Name	Horrigan
Title	Associate General Counsel		
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Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

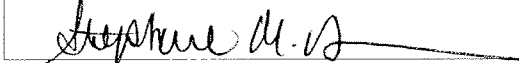
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date 02/04/2008

By Stephanie Dumont

(Name)

Vice President and Associate General Counsel



(Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Stephanie Dumont,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFT website.

Form 19b-4 Information

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

On April 24, 2007, Financial Industry Regulatory Authority, Inc. or “FINRA” (f/k/a the National Association of Securities Dealers, Inc. (“NASD”)) filed with the Securities and Exchange Commission (the “SEC”) proposed rule change SR-NASD-2007-031 to amend NASD Rule 7001E (Securities Transaction Credit) to increase to 100% the percentage of New York Stock Exchange (“Tape A”), American Stock Exchange (“Tape B”) and Nasdaq Exchange (“Tape C”) revenue shared with FINRA members reporting trades to the NASD/NYSE Trade Reporting Facility (the “NASD/NYSE TRF”)¹ (the “original filing”). FINRA filed Partial Amendment No. 1 on June 1, 2007 and Partial Amendment No. 2 on October 29, 2007. On November 14, 2007, the SEC published for comment the proposed rule change, as modified by Partial Amendment No. 2 only, in the Federal Register.²

FINRA is filing this Partial Amendment No. 3 to (1) respond to the comment letter received in response to the Federal Register publication³ and (2) propose a technical change to clarify an ambiguity relating to the definition of “Tape B” in current Rule 7001E. With this Partial Amendment No. 3, FINRA is including (1) Exhibit 4 (see below), which reflects changes to the text of the proposed rule change pursuant to this Partial Amendment No. 3, marked to show additions to the text as proposed in the original filing; and (2) Exhibit 5 (see below), which reflects the changes to the current rule text that are proposed in SR-NASD-2007-031, as amended by this Partial Amendment No. 3.

Response to Comments

The commenter argues that the proposed rule change does not address the competitive impacts of the proposed 100% rebate and that any potential short-term benefits from the rebate may be severely diminished by the long-term impact of less competition. The commenter also asserts that the proposed 100% rebate, without any deductions for costs allocated, appears to indicate that the NYSE may be willing to take a

¹ Effective July 30, 2007, FINRA was formed through the consolidation of NASD and the member regulatory functions of NYSE Regulation. Accordingly, the NASD/NYSE TRF is now doing business as the FINRA/NYSE TRF. The formal name change of each of FINRA’s Trade Reporting Facilities (“TRFs”) is pending and once completed, FINRA will file a separate proposed rule change to reflect those changes in the Manual.

² See Securities Exchange Act Release No. 56754 (November 6, 2007), 72 FR 64101 (November 14, 2007) (notice of filing of SR-NASD-2007-031).

³ The SEC received a comment letter from Christopher Gilkerson and Gregory Babyak, Co-Chairs, Market Data Subcommittee of the Technology and Regulation Committee, Securities Industry and Financial Markets Association (“SIFMA”), dated December 5, 2007. This comment letter also was submitted in response to proposed rule change SR-NASD-2007-043. FINRA will submit a separate response to comments as a partial amendment to SR-NASD-2007-043.

loss on its NASD/NYSE TRF business, with the possible result, intended or unintended, of driving smaller TRFs (e.g., NASD/NSX TRF) out of business, resulting in fewer TRF choices. The commenter states that the proposed rule change, by merely stating in a conclusive manner that “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 Act,” does not meet the requirements of the Securities Exchange Act of 1934 (the “Act”) and such potential anti-competitive behavior should be examined closely.

The Act does not require that FINRA rules impose no economic burden on competition, but rather that any such burden be necessary and appropriate to further the purposes of the Act.⁴ It is FINRA’s view that a reduction in pricing by a self-regulatory organization (or a rebate in this instance) with respect to any facility or service does not constitute an undue burden on competition that is not in furtherance of the Act.

The commenter also makes several arguments that are not germane to this proposed rule change. First, the commenter argues that the proposed market data rebate demonstrates that the market data fees levied on firms are excessive and have no reasonable basis. Second, the commenter argues that the proposed market data rebate demonstrates the ability of self-regulatory organizations to allocate the costs of collecting and distributing market data to others. Third, the commenter argues that the proposed market data rebate demonstrates a lack of transparency regarding the costs of collecting and distributing the market data and the resulting revenues, and the commenter and other parties are unable to comment fully on the wisdom behind the proposed rule change due to this lack of transparency.

As the commenter points out, the reasonableness of market data fees and the purported lack of transparency regarding the cost of collecting the market data are at issue in the NetCoalition Petition. Approval of this proposed rule change does not require resolution of these issues. Additionally, with respect to the commenter’s assertion that it cannot verify the wisdom of the proposed rule change, it is FINRA’s view that the proposed 100% rebate is reasonable for the reasons stated in the published rule filing. The commenter’s assertion does not, in FINRA’s view, refute the stated rationale for the proposed 100% rebate and FINRA does not believe that the costs of collecting and distributing the market data – which costs are not set by FINRA – are necessarily determinative of the reasonableness of the rebate.

⁴ Section 15A(b)(9) of the Act requires that FINRA’s rules not impose “any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act].” 15 U.S.C. 78o-3(b)(9).

Proposed Technical Amendment

FINRA is proposing a technical amendment to clarify an ambiguity in current Rule 7001E. Rule 7001E refers to “Amex” and “Tape B” as synonymous, but in fact the Tape B revenue sharing program is interpreted to include stocks listed on regional exchanges, such as NYSE Arca, because transactions in such stocks are reported to Tape B.⁵

⁵ FINRA recently proposed an identical change to NASD Rule 7001B relating to the NASD/Nasdaq TRF. See Securities Exchange Act Release No. 57164 (January 17, 2008), 73 FR 4295 (January 24, 2008) (notice of filing of SR-FINRA-2007-041).

EXHIBIT 4

Below is the text of the proposed rule change with the changes proposed in the original filing shown as if adopted. Proposed new language in this Partial Amendment No. 3 is underlined.

* * * * *

7000E. CHARGES FOR NASD/NYSE TRADE REPORTING FACILITY

SERVICES

7001E. Securities Transaction Credit

NASD members that trade securities listed on the NYSE (“Tape A”), Amex and regional exchanges (“Tape B”), or Nasdaq (“Tape C”) in over-the-counter transactions reported to the NASD/NYSE Trade Reporting Facility may receive from the NASD/NYSE Trade Reporting Facility transaction credits based on the transactions attributed to them. A transaction is attributed to a member if the member is identified as the executing party in a trade report submitted to the NASD/NYSE Trade Reporting Facility that the NASD/NYSE Trade Reporting Facility submits to the Consolidated Tape Association or the Nasdaq Securities Information Processor. An NASD member may earn credits from any of three pools maintained by the NASD/NYSE Trade Reporting Facility. The Tape A, Tape B, and Tape C pools represent 100% of the gross revenue paid by the Consolidated Tape Association or the Nasdaq Securities Information Processor with respect to the NASD/NYSE Trade Reporting Facility for Tape A, Tape B, and Tape C transactions. An NASD member may earn credits from the pools according to the pro rata share of revenue attributable to over-the-counter transactions reported to the NASD/NYSE Trade Reporting Facility by the member in Tape A, Tape B, and Tape

C for each calendar quarter. To the extent that Tape A, Tape B or Tape C revenue is subject to any adjustment, credits provided may be adjusted accordingly.

* * * * *

EXHIBIT 5

Below is the text of the proposed rule change, as amended by this Partial Amendment No. 3. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

7000E. CHARGES FOR NASD/NYSE TRADE REPORTING FACILITY

SERVICES

7001E. Securities Transaction Credit

NASD members that trade securities listed on the NYSE (“Tape A”), Amex and regional exchanges (“Tape B”), or Nasdaq (“Tape C”) in over-the-counter transactions reported to the NASD/NYSE Trade Reporting Facility may receive from the NASD/NYSE Trade Reporting Facility transaction credits based on the transactions attributed to them. A transaction is attributed to a member if the member is identified as the executing party in a trade report submitted to the NASD/NYSE Trade Reporting Facility that the NASD/NYSE Trade Reporting Facility submits to the Consolidated Tape Association or the Nasdaq Securities Information Processor. An NASD member may earn credits from any of three pools maintained by the NASD/NYSE Trade Reporting Facility. The Tape A, Tape B, and Tape C pools represent [50]100% of the gross revenue paid by the Consolidated Tape Association or the Nasdaq Securities Information Processor with respect to the NASD/NYSE Trade Reporting Facility for Tape A, Tape B, and Tape C transactions. An NASD member may earn credits from the pools according to the pro rata share of revenue attributable to over-the-counter transactions reported to the NASD/NYSE Trade Reporting Facility by the member in Tape A, Tape B, and Tape C for each calendar quarter. To the extent that Tape A, Tape B or Tape C revenue is

subject to any adjustment, credits provided may be adjusted accordingly.

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