

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56314; File No. SR-NASD-2007-051)

August 23, 2007

Self-Regulatory Organizations; National Association of Securities Dealers, Inc. (n/k/a Financial Industry Regulatory Authority, Inc.); Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend NASD Rule 7002B to Establish Fees for the Transfer of Transaction Fees Through the NASD/Nasdaq Trade Reporting Facility

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 July 20, 2007, the National Association of Securities Dealers, Inc. (“NASD”) 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 substantially prepared by NASD.³ NASD has designated this proposal as “establishing or changing a due, fee, or other charge” under Section 19(b)(3)(A)(ii) of the Act⁴ and Rule 19b-4(f)(2) thereunder,⁵ which renders the proposed rule change effective immediately upon filing. 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 the Substance of the Proposed Rule Change

NASD is proposing to amend NASD Rule 7002B to establish a fee for reports that are submitted to the NASD/Nasdaq Trade Reporting Facility (the “NASD/Nasdaq TRF”) to process

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD’s Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority Inc., or FINRA, in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. See Securities Exchange Act Release No. 56146 (July 26, 2007) 72 FR 42190 (August 1, 2007).

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵ 17 CFR 240.19b-4(f)(2).

transaction fees charged by one member to another member pursuant to NASD Rule 6130(h). In addition, NASD is proposing technical, non-substantive amendments to the NASD Rule 7000 Series to change all references to the “Trade Reporting Facility” to the “NASD/Nasdaq Trade Reporting Facility.”

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

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7000B. CHARGES FOR NASD/NASDAQ TRADE REPORTING FACILITY SERVICES

7001B. Securities Transaction Credit

NASD members that trade securities listed on the NYSE (“Tape A”), Amex (“Tape B”), or Nasdaq (“Tape C”) in over-the-counter transactions reported to the NASD/Nasdaq Trade Reporting Facility may receive from the NASD/Nasdaq 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/Nasdaq Trade Reporting Facility that the NASD/Nasdaq 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/Nasdaq Trade Reporting Facility. The Tape A, Tape B, and Tape C pools represent 50% of the revenue paid by the Consolidated Tape Association or the Nasdaq Securities Information Processor with respect to the NASD/Nasdaq Trade Reporting Facility for each of Tape A, Tape B, and Tape C transactions after deducting the amount, if any, that the NASD/Nasdaq Trade Reporting Facility pays to the Consolidated Tape Association or the Nasdaq Securities Information Processor for capacity usage. 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/Nasdaq Trade Reporting Facility by the member in each of Tape A, Tape B, and Tape C for each calendar quarter. Credits will be paid on a quarterly basis.

7002B. NASD/Nasdaq Trade Reporting Facility Reporting Fees

The following charges shall be paid by participants for use of the NASD/Nasdaq Trade Reporting Facility. In the case of trades where the same market participant is on both sides of a trade report, applicable fees assessed on a “per side” basis will be assessed once, rather than twice.

Transaction Related Charges:	
Reporting of transactions in Nasdaq-listed securities not subject to comparison through the <u>NASD/Nasdaq</u> Trade Reporting Facility	No charge
Reporting of transactions in stocks reported to the Consolidated Tape Association not subject to comparison through the <u>NASD/Nasdaq</u> Trade Reporting Facility (“CTA Covered Transactions”)	
Average daily volume of media transaction reports for CTA Covered Transactions during the month that are submitted or introduced by such participant to the <u>NASD/Nasdaq</u> Trade	Fee per side for reports of CTA Covered Transactions to which such participant is a party:

Reporting Facility, in which the participant is identified as the reporting party:	
0 to 5,000	\$0.029
More than 5,000	\$0.029 for a number of reports equal to 5,000 times the number of trading days in the month \$0.00 for all remaining reports
Reporting of all other transactions not subject to comparison through the <u>NASD/Nasdaq Trade Reporting Facility</u>	\$0.029/side
<u>Clearing report to transfer a transaction fee charged by one member to another member pursuant to Rule 6130(h)</u>	<u>\$0.03/side</u>
Comparison	\$0.0144/side per 100 shares (minimum 400 shares; maximum 7,500 shares)
Late Report—T+N	\$0.288/side
Query	\$0.50/query
Corrective Transaction Charge	\$0.25/Cancel, Error, Inhibit, Kill, or ‘No’ portion of No/Was transaction, paid by reporting side; \$0.25/Break, Decline

	transaction, paid by each party
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7003B. Aggregation of Activity of Affiliated Members

(a) For purposes of applying any provision of the Rule 7000B Series that reflects a charge assessed, or credit provided, by the NASD/Nasdaq Trade Reporting Facility, a member may request that the NASD/Nasdaq Trade Reporting Facility aggregate its activity with the activity of its affiliates. A member requesting aggregation of affiliate activity shall be required to certify to NASD the affiliate status of entities whose activity it seeks to aggregate prior to receiving approval for aggregation, and shall be required to inform NASD immediately of any event that causes an entity to cease to be an affiliate. In addition, NASD reserves the right to request information to verify the affiliate status of an entity.

(b) For purposes of applying any provision of the Rule 7000B Series that reflects a charge assessed, or credit provided, by the NASD/Nasdaq Trade Reporting Facility, references to an entity (including references to a “member,” a “participant,” or a “Trade Reporting Facility Participant”) shall be deemed to include the entity and its affiliates that have been approved for aggregation.

(c) No Change.

7004B. Late Fees

(a) All charges imposed by the NASD/Nasdaq Trade Reporting Facility that are past due 45 days or more will be subject to a late fee computed by taking the summation of one and one-half percent (1 ½%) of the amount past due for the first month plus one and one-half percent (1 ½%) of the amount past due for any month thereafter, compounded by late fees assessed for previous months.

(b) No Change.

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

In its filing with the Commission, NASD 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. NASD 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

NASD recently filed a proposed rule change for immediate effectiveness to allow NASD members to use the NASD/Nasdaq TRF to process transaction fees charged by one member to another member on trades in NMS stocks, as defined in Rule 600(b)(47) of Regulation NMS under the Act, effected otherwise than on an exchange.⁶ NASD Rule 6130(h) provides that members may agree in advance to such transfers through the submission of a clearing report. Such report, inclusive of the transaction fee, will be submitted to the National Securities Clearing Corporation for processing. To facilitate the transfer of the transaction fee, the report submitted to the NASD/Nasdaq TRF shall provide, in addition to all other information required to be submitted by any other rule, a total per share or contract price amount, inclusive of the transaction fee. NASD Rule 6130(h) relates solely to transaction fees charged by one NASD member to another NASD member. Members cannot use the NASD/Nasdaq TRF to facilitate

⁶ See Securities Exchange Act Release No. 56007 (July 3, 2007), 72 FR 37807 (July 11, 2007) (notice of filing and immediate effectiveness of SR-NASD-2007-046). SR-NASD-2007-046 became operative on July 9, 2007.

the transfer of fees for transactions with a customer (i.e., clients that are not brokers or dealers) or a non-member.

NASD is proposing to establish the fee to be charged by the NASD/Nasdaq TRF for the use of this service.⁷ Pursuant to NASD Rule 7002B, the fee will be \$0.03 per side for each clearing report submitted to the NASD/Nasdaq TRF to transfer a transaction fee. This fee is in addition to any other fee applicable to the transaction.

In addition, NASD is proposing technical, non-substantive amendments to the NASD Rule 7000 Series to change all references to the “Trade Reporting Facility” to the “NASD/Nasdaq Trade Reporting Facility.” These changes are consistent with the NASD Rule 7000C Series (relating to the NASD/NSX Trade Reporting Facility), 7000D Series (relating to the NASD/BSE Trade Reporting Facility), and 7000E Series (relating to the NASD/NYSE Trade Reporting Facility).

NASD has filed the proposed rule change for immediate effectiveness. The operative date of the proposed rule change will be August 1, 2007.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁸ in general, and with Section 15A(b)(5) of the Act,⁹ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASD operates or controls. NASD believes that the fees are reasonably allocated among members based on their usage of

⁷ NASD did not propose any fees for this service as part of SR-NASD-2007-046.

⁸ 15 U.S.C. 78o-3.

⁹ 15 U.S.C. 78o-3(b)(5).

the functionality to transfer explicit fees, and are generally consistent with other fees charged by the NASD/Nasdaq TRF for value added services.

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

NASD 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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁰ and Rule 19b-4(f)(2)¹¹ thereunder, because it involves a member due, fee, or other charge. At any time within sixty (60) days of the filing of such 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, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4(f)(2).

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-NASD-2007-051 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-NASD-2007-051. 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 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 10:00 am and 3:00 pm. 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-NASD-2007-051 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Nancy M. Morris
Secretary

¹² 17 CFR 200.30-3(a)(12).