

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58804; File No. SR-FINRA-2008-050)

October 17, 2008

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Eliminate FINRA/NSX Trade Reporting Facility Securities Transaction Credit Program

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 October 15, 2008, Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) 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 prepared by FINRA. FINRA has designated the proposed rule change as “establishing or changing a due, fee or other charge” under Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ 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 delete FINRA Rule 7610B (Securities Transaction Credit) to eliminate the securities transaction credit on market data revenue earned by the FINRA/NSX Trade Reporting Facility (the “FINRA/NSX TRF”).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 C.F.R. 240.19b-4(f)(2).

Below is the text of the proposed rule change. Proposed new language is underscored; proposed deletions are in brackets.⁵

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7600B. CHARGES FOR FINRA/NSX TRADE REPORTING FACILITY SERVICES

7610B. [Securities Transaction Credit] Reserved

[(a) FINRA 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 FINRA/NSX Trade Reporting Facility may receive from the FINRA/NSX 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 FINRA/NSX Trade Reporting Facility that the FINRA/NSX Trade Reporting Facility submits to the Consolidated Tape Association or the Nasdaq Securities Information Processor. A FINRA member may earn credits from any of three pools maintained by the FINRA/NSX Trade Reporting

⁵ On September 25, 2008, the SEC approved proposed rule change SR-FINRA-2008-021, in which FINRA proposed, among other things, to adopt NASD Rule 7001C (Securities Transaction Credit) as FINRA Rule 7610B in the Consolidated FINRA Rulebook. See Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (Order Approving SR-FINRA-2008-021; SR-FINRA-2008-022; SR-FINRA-2008-026; SR-FINRA-2008-028 and SR-FINRA-2008-029). FINRA will announce the implementation date of SR-FINRA-2008-021 in a Regulatory Notice.

This proposed rule change proposes amendments to the underlying rule text of FINRA Rule 7610B as adopted pursuant to SR-FINRA-2008-021. Upon the filing of this proposed rule change, the Consolidated FINRA Rulebook will be updated to reflect the deletion of FINRA Rule 7610B. In addition, because FINRA Rule 7610B has not yet been implemented, FINRA’s Transitional Rulebook, which includes NASD Rules and Incorporated NYSE Rules, will be updated to reflect the deletion of NASD Rule 7001C.

Facility. The Tape A, Tape B, and Tape C pools represent 75% of the gross revenue paid by the Consolidated Tape Association or the Nasdaq Securities Information Processor with respect to the FINRA/NSX Trade Reporting Facility for Tape A, Tape B, and Tape C transactions. Subject to paragraph (b) below, a FINRA member may earn credits from the pools according to the pro rata share of revenue attributable to over-the-counter transactions reported to the FINRA/NSX 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.]

[(b) No FINRA member shall be eligible to receive a securities transaction credit under Rule 7610B(a) for any calendar quarter in which the total transaction credit payable to such member is less than \$250.]

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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, 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

Background

The FINRA/NSX TRF provides FINRA members with another mechanism for reporting locked-in transactions in NMS stocks, as defined in Rule 600(b)(47) of SEC Regulation NMS, effected otherwise than on an exchange. In connection with the establishment of the FINRA/NSX TRF, FINRA and National Stock Exchange, Inc. (“NSX”) entered into a Limited Liability Company Agreement (the “FINRA/NSX TRF LLC Agreement”). Under the FINRA/NSX TRF LLC Agreement, FINRA, the “SRO Member,” has sole regulatory responsibility for the FINRA/NSX TRF. NSX, the “Business Member,” is primarily responsible for the management of the FINRA/NSX TRF’s business affairs to the extent those affairs are not inconsistent with the regulatory and oversight functions of FINRA. Additionally, the Business Member is obligated to pay the cost of regulation and is entitled to the profits and losses, if any, derived from the operation of the FINRA/NSX TRF.

Pursuant to FINRA Rule 7610B(a), FINRA members reporting trades in New York Stock Exchange (“Tape A”), American Stock Exchange (now known as NYSE Alternext US) and regional exchanges (“Tape B”) and the Nasdaq Exchange (“Tape C”) securities to the FINRA/NSX TRF receive a 75% *pro rata* credit on gross market data revenue earned by the FINRA/NSX TRF. “Gross revenue” is the revenue received by the FINRA/NSX TRF from the three tape associations after the tape associations deduct allocated support costs and unincorporated business costs. Under FINRA Rule 7610B(b), a member is not eligible to receive a securities transaction credit for any calendar quarter in which such credit totals less than \$250.

Proposal to Eliminate Securities Transaction Credit

FINRA is proposing to delete FINRA Rule 7610B in its entirety to eliminate the securities transaction credit program for FINRA/NSX TRF participants. Thus, FINRA members reporting trades in Tape A, Tape B and Tape C stocks to the FINRA/NSX TRF will receive no credit on or percentage of gross market data revenue earned by the FINRA/NSX TRF. NSX, as the Business Member under the FINRA/NSX TRF LLC Agreement, has determined that the elimination of the securities transaction credit is necessary for competitive reasons and to increase funds to cover the regulatory costs associated with the FINRA/NSX TRF.

Securities transaction credits payable to FINRA members for the fourth quarter of 2008 will be calculated under Rule 7610B(a) for the period beginning October 1, 2008 and ending at the close of business on October 17, 2008. The \$250 minimum threshold for the securities transaction credit will not apply for this period in order to preclude any negative financial impact to reporting members due to the short calculation period in the fourth quarter of 2008. Trades submitted to the FINRA/NSX TRF on or after October 20, 2008, the operative date of the proposed rule change, will not be eligible for securities transaction credits. NSX, as the Business Member, will provide notice to FINRA/NSX TRF participants respecting this calculation. To the extent that the Consolidated Tape Association or the Nasdaq Securities Information Processor subsequently adjusts any Tape A, Tape B or Tape C revenue earned by the FINRA/NSX TRF for any period(s) during which the securities transaction credit program was in effect, credits paid to members reporting trades to the FINRA/NSX TRF would be adjusted, as necessary, in accordance with the rule in effect during such period.

FINRA has filed the proposed rule change for immediate effectiveness. The operative date of the proposed rule change will be October 20, 2008.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁶ in general, and with Section 15A(b)(5) of the Act,⁷ in particular, which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes that the proposed rule change provides for the equitable allocation of reasonable dues, fees and other charges among members in that it will be applied uniformly among members that participate in the FINRA/NSX TRF.

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.

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 upon filing pursuant to Section

⁶ 15 U.S.C. 78o-3.

⁷ 15 U.S.C. 78o-3(b)(5).

19(b)(3)(A) of the Act⁸ and paragraph (f)(2) of Rule 19b-4 thereunder,⁹ in that the proposed rule change is establishing or changing a due, fee, or other charge applicable only to a member, which renders the proposed rule change effective immediately upon filing. 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 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-2008-050 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 SR-FINRA-2008-050. This file number should be included on the subject line if e-mail is used. To help the Commission process

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(2).

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 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-2008-050 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Florence E. Harmon
Acting Secretary

¹⁰ 17 CFR 200.30-3(a)(12).