

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61648; File No. SR-FINRA-2010-009)

March 4, 2010

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Provide Additional Relief Relating to Certain FINRA/Nasdaq Trade Reporting Facility and OTC Reporting Facility Fees

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 March 1, 2010, Financial Industry Regulatory Authority, Inc. (“FINRA”) 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)(ii) 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 waive and issue a credit for fees that were charged to FINRA members under FINRA Rules 7620A and 7710 for the submission of “as/of” trade reports to the FINRA/Nasdaq Trade Reporting Facility (“FINRA/Nasdaq TRF”) and the OTC Reporting Facility (“ORF”), respectively, for trades executed on eight days in the months of August and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

September 2009. The relief proposed herein is in addition to the fee relief provided under SR-FINRA-2009-088. The proposed rule change does not require amendments to any FINRA rules.

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

Pursuant to FINRA Rules 7620A and 7710, members are charged fees for trade reporting to the FINRA/Nasdaq TRF and ORF, respectively, and the fee for the submission of late trade reports, including "as/of" reports, is higher than the fee for the submission of timely trade reports. "As/of" reports are reports of trades that were executed on a date prior to the date they were reported.

During the months of August and September 2009, various Automated Confirmation Transaction Service ("ACT") technology issues impacted trade reporting to the FINRA/Nasdaq TRF and the ORF for a period of eight days: August 3, August 4, August 5, August 17, August 21, September 16, September 25 and September 28. Due to the ACT technology issues, members were unable to report trades on trade date and thus incurred higher than normal reporting charges due to the higher number of "as/of" reports that they were compelled to submit.

On December 7, 2009, FINRA filed proposed rule change SR-FINRA-2009-088, and on December 17, 2009, the SEC published notice of filing and immediate effectiveness of SR-FINRA-2009-088 in the Federal Register.⁵ In that filing, FINRA proposed to waive the fees for “as/of” trade reports submitted on the following days in 2009: August 4, August 5, August 6, August 18, August 24, September 17, September 28 and September 29. These dates are the next business day (T+1) following the days on which the ACT technology issues occurred. The relief proposed in SR-FINRA-2009-088 was based on the assumption that members that were unable to report on trade date due to ACT technology issues reported the trades on the following business day (T+1).

Subsequent to publication of notice in the Federal Register, however, FINRA obtained additional information from Nasdaq, the FINRA/Nasdaq TRF “Business Member” and ACT technology provider, and it was determined that the scope of the relief provided under SR-FINRA-2009-088 is too narrow. Some members that were unable to report on trade date did not, in fact, report on the following business day (T+1), but reported two (or perhaps more) days after trade date (T+2 or later). The relief provided under SR-FINRA-2009-088 does not reach these members.

Accordingly, FINRA is proposing to waive the fees for all “as/of” trade reports submitted on T+2 or later to the FINRA/Nasdaq TRF and ORF that have a trade execution date of August 3, August 4, August 5, August 17, August 21, September 16, September 25 and September 28, 2009 (i.e., the dates on which the ACT technology issues occurred). The proposed relief will apply to fees for “as/of” trade reports submitted through December 31, 2009. Members will be

⁵ See Securities Exchange Act Release No. 61160 (December 14, 2009), 74 FR 67284 (December 18, 2009) (Notice of Filing and Immediate Effectiveness of SR-FINRA-2009-088).

issued a credit for the fees on a future invoice.⁶

The proposed relief is in addition to the relief provided in SR-FINRA-2009-088 for fees charged on “as/of” trade reports submitted on T+1. FINRA believes that such additional relief is appropriate in order to make all members whole, since the higher charges were the result of an ACT technology issue and not the fault of the member.

FINRA has filed the proposed rule change for immediate effectiveness. The operative date will be the date of filing.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,⁷ 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 waiver and credit of the “as/of” reporting fees is fair and equitable in that it will apply uniformly to all FINRA members that submitted “as/of” trade reports to the FINRA/Nasdaq TRF and ORF for trades with the designated trade dates.

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

FINRA does not believe that the proposed rule change will impose any burden on competition 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

⁶ FINRA notes that a similar proposal to waive and issue a credit for certain cancel fees was the subject of a filing by NASDAQ OMX PHLX, Inc. See Securities Exchange Act Release No. 60853 (October 21, 2009), 74 FR 55594 (October 28, 2009) (Notice of Filing and Immediate Effectiveness of File No. SR-PHLX-2009-89).

⁷ 15 U.S.C. 78q-3(b)(5).

No written comments were either solicited or received.

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)(ii) of the Act⁸ and paragraph (f)(2) of Rule 19b-4 thereunder.⁹ 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-2010-009 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-FINRA-2010-009. 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

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f)(2).

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 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 10:00 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 publicly available. All submissions should refer

to File Number SR-FINRA-2010-009 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
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).