

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61817; File No. SR-FINRA-2010-011)

March 31, 2010

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify Certain FINRA/Nasdaq Trade 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 12, 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 amend FINRA Rule 7620A to modify certain fees applicable to members that use the FINRA/Nasdaq Trade Reporting Facility (the “FINRA/Nasdaq TRF”).

The text of the proposed rule change is available on FINRA’s Web site at <http://www.finra.org>, at the principal office of FINRA and at the Commission’s Public Reference Room.

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).

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/Nasdaq TRF is a facility of FINRA that is operated by The NASDAQ OMX Group, Inc. (“NASDAQ OMX”) and utilizes Automated Confirmation Transaction (“ACT”) Service technology. In connection with the establishment of the FINRA/Nasdaq TRF, FINRA and NASDAQ OMX entered into a limited liability company agreement (the “LLC Agreement”). Under the LLC Agreement, FINRA, the “SRO Member,” has sole regulatory responsibility for the FINRA/Nasdaq TRF. NASDAQ OMX, the “Business Member,” is primarily responsible for the management of the FINRA/Nasdaq TRF’s business affairs, including establishing pricing for use of the FINRA/Nasdaq TRF, 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/Nasdaq TRF.

Pursuant to Rule 7620A, FINRA members are charged fees for trade reporting to the FINRA/Nasdaq TRF. The current fee structure for reports of “locked-in trades” (i.e., trades that

are not submitted for ACT comparison and do not require specific acceptance by the contra party) is based on (1) the number of reports submitted to the FINRA/Nasdaq TRF in which the member is identified as a party to the trade; (2) whether the transaction is “media” eligible (i.e., the trade report is submitted to FINRA for public dissemination by the Securities Information Processors);⁵ (3) whether the trade report is submitted for clearance and settlement related functions; and (4) whether the transaction is in a non-Nasdaq exchange-listed security that is reported to one of the Consolidated Tape Association (“CTA”) tapes.⁶ Members must pay a fee for reports submitted to the FINRA/Nasdaq TRF with respect to media-eligible locked-in transactions in non-Nasdaq exchange-listed (or CTA) securities. A member that exceeds, in any given month, a daily average of 5,000 media reports in which the member is identified as the reporting party is afforded a cap on its fees equal to \$145 (\$0.029 multiplied by 5,000) multiplied by the number of trading days in the month. By contrast, there currently is no fee for the submission of locked-in reports for media-eligible transactions in Nasdaq-listed securities.

Proposed Fee Schedule

NASDAQ OMX, as the Business Member, has determined to replace the current fee schedule for reporting “locked-in” trades to the FINRA/Nasdaq TRF with a new fee schedule applicable to “Non-Comparison/Accept (Non-Match/Compare)” trades. Such trades are defined as transactions that are not subject to the ACT comparison process, and they may be submitted as media or non-media, clearing or non-clearing, AGU (automated give-up), QSR (Qualified

⁵ “Non-media” reports are not submitted to FINRA for public dissemination purposes, but are submitted for regulatory and/or clearance and settlement purposes.

⁶ Market data is transmitted to three tapes based on the listing venue of the security: New York Stock Exchange securities (“Tape A”), American Stock Exchange and regional exchange securities (“Tape B”), and Nasdaq Stock Market securities (“Tape C”). Tape A and Tape B are generally referred to as the Consolidated Tape.

Service Representative), one-sided and internalized crosses.⁷

Accordingly, FINRA is proposing to amend Rule 7620A to reflect the new fee schedule. Under the proposed schedule, for each media and non-media report submitted to the FINRA/Nasdaq TRF, both the member identified in the report as the “Executing Party (EP)” and the member identified as the “Contra (CP)” will be assessed a fee.⁸ Thus, the proposed rule change establishes four categories of fees (Media/Executing Party, Non-Media/Executing Party, Media/Contra and Non-Media/Contra), and each category is applicable to transactions in each of the three Tapes (Tapes A, B and C).⁹ A member will be assessed a transaction fee of \$0.018 if it is the Executing Party, and \$0.013 if it is the Contra, multiplied by the number of same-type reports (i.e., media or non-media) submitted in a given month.

Additionally, the proposed fee schedule includes a cap applicable to each of the four new fee categories based on the average daily volume of reports submitted to a particular Tape. To be eligible for a cap in a particular Tape, a member must achieve a minimum average daily volume of media reports submitted to that Tape as Executing Party in a given month. (The

⁷ FINRA is proposing to adopt Supplementary Material in Rule 7260A to define a number of terms used in the proposed fee schedule, including “Non-Comparison/Accept (Non-Match/Compare)” trades.

⁸ Pursuant to the proposed Supplementary Material, the “Executing Party (EP)” is defined as the member with the trade reporting obligation under FINRA rules, and the “Contra (CP)” is defined as the member on the contra side of a trade report. These positions formerly were identified in FINRA rules as the “Market Maker” or “MM” side and the “Order Entry” or “OE” side, respectively.

FINRA notes that non-members (non-member broker-dealers and customers) are not assessed fees under FINRA rules.

⁹ The four categories of fees are independent of each other and, as such, may be subsequently adjusted individually. Any change to one or more of these categories would be subject to a future proposed rule change by FINRA.

proposed volume threshold for all three Tapes is 2,500.)¹⁰ Thus, the proposed rule change would reduce the per unit fee traditionally assessed (from \$0.029 to \$0.018 and \$0.013, as applicable), as well as the volume threshold required to achieve a fee cap (from 5,000 to 2,500).

Trade reports in which the member appears as the Contra Party do not contribute to achievement of the cap. However, if a member is eligible for a cap based on media trade reports in which it appears as the Executing Party, then caps also would apply to media reports in which that member appears as the Contra Party, as well as to non-media reports where the member appears as Executing Party or Contra Party. Thus, once a member achieves a cap (based on the number of Media/Executing Party reports), under the current proposal, the maximum number of billable trade reports applicable to each fee category is 2,500 for Tape A, B or C. The maximum number of billable Media/Executing Party reports will always be equal to the daily average number of Media/Executing Party trades needed to qualify for a cap for Tape A, B or C, as specified in the Rule. For each of the other three fee categories (Non-Media/Executing Party, Media/Contra and Non-Media/Contra), the maximum number of billable trades also is specified in the Rule and can be adjusted independently of the Media/Executing Party cap.¹¹ Under the current proposal, if a member is eligible for the fee cap, it will be assessed a maximum fee within each category equal to the category fee (either \$0.018 or \$0.013) multiplied by 2,500 multiplied by the number of trading days in the month.

The following table provides an example of the fee schedule applicable to a member that is ineligible for a fee cap (based on 22 trading days in the month):

¹⁰ Although the proposed fee schedule includes identical average daily volume thresholds for all three Tapes, the thresholds are independent of each other and, as such, may be subsequently adjusted individually. Any change to one or more of these thresholds would be subject to a future proposed rule change by FINRA.

¹¹ Any change to one or more of these caps would be subject to a future proposed rule change by FINRA.

No Fee Cap – Tape A				
Report Type/Side	Average Daily Trades	Billable Trades	Rate	Cost
Media/EP	2,100	2,100	\$0.018	\$832
Non-Media/EP	4,000	4,000	\$0.018	\$1584
Media/Contra	3,000	3,000	\$0.013	\$858
Non-Media/Contra	2,100	2,100	\$0.013	\$601
Total	11,200	11,200		\$3,875

The following table provides an example of the fee schedule applicable to a member that is eligible for a fee cap (based on 22 trading days in the month):

Fee Cap – Tape A				
Report Type/Side	Average Daily Trades	Billable Trades	Rate	Cost
Media/EP	4,000	2,500	\$0.018	\$990
Non-Media/EP	4,000	2,500	\$0.018	\$990
Media/Contra	4,000	2,500	\$0.013	\$715
Non-Media/Contra	4,000	2,500	\$0.013	\$715
Total	16,000	10,000		\$3,410

FINRA notes that the proposed rule change does not propose to modify the other fees assessed under Rule 7620A, specifically: the fee assessed a member for submitting a clearing report to the FINRA/Nasdaq TRF to transfer a transaction fee pursuant to Rule 7230A(h); the “Comparison” fee; the “Late Report – T+N” fee; the “Query” fee; and the “Corrective Transaction Charge.”

NASDAQ OMX, as the Business Member, has advised FINRA that it believes that the proposed fee schedule more equitably allocates the fees assessed to members for their use of the FINRA/Nasdaq TRF. Under current Rule 7620A, the fee burden can fall disproportionately on certain parties (e.g., reporting parties submitting media-only reports (with no clearing) of transactions in CTA securities and contra parties to locked-in trades in CTA securities). Under the proposed fee schedule, both members identified as parties to the trade in the trade report will be assessed a fee. In addition, the proposed fee schedule introduces fees for reports of

transactions in Nasdaq-listed securities, as well as non-media, non-clearing trade reports, which have historically not been assessed a fee. NASDAQ OMX believes that extending fees for the submission of these reports is consistent with its goal of fairly and equitably distributing the costs associated with the operation and maintenance of the FINRA/Nasdaq TRF. Thus, the proposed fees for the submission of non-comparison trade reports to the FINRA/Nasdaq TRF are spread more equitably across parties (Executing Party and Contra), as well as report type (media and non-media) and security type (Nasdaq-listed and non-Nasdaq exchange-listed). NASDAQ OMX believes that the proposed reduction in fees is appropriate given that the burden of paying for the use of the FINRA/Nasdaq TRF will be shared by all participants across the full range of transactions.

FINRA has filed the proposed rule change for immediate effectiveness. FINRA is proposing that the operative date of the proposed rule change will be April 1, 2010.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,¹² 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 fee schedule is fair and provides an equitable allocation of fees in that it will apply uniformly to all FINRA members that use the FINRA/Nasdaq TRF.

¹² 15 U.S.C. 78q-3(b)(5).

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

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 Act¹³ and paragraph (f)(2) of Rule 19b-4 thereunder.¹⁴ 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-2010-011 on the subject line.

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁴ 17 CFR 240.19b-4(f)(2).

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-2010-011. 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 Web site viewing and printing 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 publicly available. All submissions should refer to File Number SR-FINRA-2010-011 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.¹⁵

Florence E. Harmon
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).