

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-63695; File No. SR-FINRA-2010-068)

January 11, 2011

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 30, 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 and II 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 Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> 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 7610A (Securities Transaction Credit) to modify credits provided to members that use the FINRA/Nasdaq Trade Reporting Facility (“FINRA/Nasdaq TRF”).

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

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.

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"). 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.

The FINRA/Nasdaq TRF receives revenue for transactions reported to the three tapes<sup>5</sup> from the Consolidated Tape Association and Nasdaq Securities Information Processor (the “Tapes”). Pursuant to Rule 7610A, FINRA members are provided with a fractional share of this revenue based on their “Market Share.”<sup>6</sup> Market Share is calculated quarterly for each member based on the transactions attributed to them in each of the three Tapes. Rule 7610A provides four tiers of revenue share: 0%, 50%, 80% and 100%. Eligibility for a tier is based on the percentage of Market Share, and the percentage of Market Share required increases as the tiers of revenue share increase.

#### Proposed Credit Schedule

NASDAQ OMX, as the FINRA/Nasdaq TRF Business Member, has determined to amend the current Market Share percentages for revenue sharing eligibility applicable to Tapes A, B and C by increasing the current qualifying Market Share percentages for each tier and adding a new Revenue Share tier. In addition, NASDAQ OMX has determined to adjust the Revenue Share percentages under the credit schedule within each of the tiers.

Accordingly, FINRA is proposing to amend Rule 7610A to reflect the new credit schedule. The following table provides a comparison of the old Market Share tier structure with the proposed new structure:

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<sup>5</sup> 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.

<sup>6</sup> Rule 7610A defines Market Share as a percentage calculated by dividing the total number of shares represented by trades reported by a FINRA member to the FINRA/Nasdaq TRF during a given calendar quarter by the total number of shares represented by all trades reported to the Consolidated Tape Association or the Nasdaq Securities Information Processor, as applicable, during that quarter. Market Share is calculated separately for each tape.

	<b>Previous Tier Break Point</b>	<b>Revenue Share</b>	<b>New Tier Break Point</b>	<b>Revenue Share</b>
<b>Tape A Tier 1</b>	=>0.75%	100%	=>2%	98%
<b>Tape A Tier 2</b>	<0.75%, =>0.25%	80%	<2%, =>1%	95%
<b>Tape A Tier 3</b>	<0.25%, =>0.10%	50%	<1%, =>0.50%	75%
<b>Tape A Tier 4</b>	<0.10%	0%	<0.50%, =>0.10%	20%
<b>Tape A Tier 5</b>	N/A		<0.10%	0%
<b>Tape B Tier 1</b>	=>0.75%	100%	=>2%	98%
<b>Tape B Tier 2</b>	<0.75%, =>0.25%	80%	<2%, =>1%	90%
<b>Tape B Tier 3</b>	<0.25%, =>0.10%	50%	<1%, =>0.35%	70%
<b>Tape B Tier 4</b>	<0.10%	0%	<0.35%, =>0.10%	10%
<b>Tape B Tier 5</b>	N/A		<0.10%	0%
<b>Tape C Tier 1</b>	=>0.75%	100%	=>2%	98%
<b>Tape C Tier 2</b>	<0.75%, =>0.25%	80%	<2%, =>1%	95%
<b>Tape C Tier 3</b>	<0.25%, =>0.10%	50%	<1%, =>0.50%	75%
<b>Tape C Tier 4</b>	<0.10%	0%	<0.50%, =>0.10%	20%
<b>Tape C Tier 5</b>	N/A		<0.10%	0%

NASDAQ OMX, as the Business Member, has advised FINRA that it believes that the increase in tier break point percentages coupled with the adjusted and new Revenue Share tiers will make the tiers more meaningful. In this regard, the Business Member has observed that the distribution of participants among the tiers is significantly weighted toward the top tiers under each of the Tapes. The Business Member believes that the proposed tier break points will result in a more even distribution of participants among the various tiers. The Business Member notes that all participants eligible for Revenue Share under the current credit schedule will continue to be eligible for Revenue Share under the proposed credit schedule, although at the adjusted Revenue Share percentages.

FINRA has filed the proposed rule change for immediate effectiveness. FINRA is proposing that the operative date of the proposed rule change will be January 3, 2011.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,<sup>7</sup> 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 amended credit schedule is fair and provides an equitable allocation of the credits provided to the FINRA/Nasdaq TRF in that it will apply uniformly to all FINRA members that use the FINRA/Nasdaq 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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and paragraph (f)(2) of Rule 19b-4 thereunder.<sup>9</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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

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<sup>7</sup> 15 U.S.C. 78o-3(b)(5).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

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](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2010-068 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-2010-068. 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 website (<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 website 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-2010-068 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.<sup>10</sup>

Elizabeth M. Murphy  
Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).