

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56491; File No. SR-FINRA-2007-015)

September 21, 2007

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Changes in the Functionality of the NASD/NYSE Trade Reporting Facility

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 September 19, 2007, the Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a 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 and II below, which Items have been prepared substantially by FINRA. FINRA has submitted the proposed rule change under Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission.<sup>5</sup> 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 proposes to amend its rules to reflect a change in the functionality of the NASD/NYSE Trade Reporting Facility (the “NASD/NYSE TRF”)<sup>6</sup> to permit Participants to

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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).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> FINRA has asked the Commission to waive the 30-day operative delay provided in Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

<sup>6</sup> Effective July 30, 2007, FINRA was formed through the consolidation of NASD and the member regulatory functions of NYSE Regulation, Inc. Accordingly, the NASD/NYSE TRF is now doing business as the FINRA/NYSE TRF. The formal name change of each

submit trades to the NASD/NYSE TRF for submission to the National Securities Clearing Corporation (“NSCC”) for clearance and settlement.

The text of the proposed rule change is available at <http://www.finra.org>, at the principal offices 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

The NASD/NYSE TRF provides FINRA members with a mechanism for reporting locked-in trades in NMS stocks, as defined in Rule 600(b)(47) of Regulation NMS under the Act,<sup>7</sup> effected otherwise than on an exchange. NASD Rules 6130E(a) and 6140E currently provide that the NASD/NYSE TRF will not submit trades to clearing and, where appropriate, Participants must have a valid Qualified Service Representative (“QSR”) agreement with the NSCC or similar arrangement to clear trades submitted to the NASD/NYSE TRF.<sup>8</sup>

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of FINRA’s Trade Reporting Facilities (“TRFs”) is pending and, once completed, FINRA will file a separate proposed rule change to reflect those changes in the Manual.

<sup>7</sup> 17 CFR 242.600(b)(47).

<sup>8</sup> See also Securities Exchange Act Release No. 55325 (February 21, 2007), 72 FR 8820 (February 27, 2007) (notice of filing and immediate effectiveness of SR-NASD-2007-011).

FINRA proposes to amend Rules 6130E(a) and 6140E to reflect a change in the functionality of the NASD/NYSE TRF to permit Participants to submit trades to the NASD/NYSE TRF for submission to the NSCC for clearance and settlement. Thus, locked-in trades (including locked-in trades reported as other than regular way settlement) will be accepted by the NASD/NYSE TRF, as they are today, and at the option of the Participant, clearing information for such trades will be submitted to the NSCC. In addition, FINRA proposes to amend Rules 4632E(e)(3)(B) and 6130E(f) to include references to “clearing” and “clearing-only” reports (in addition to non-clearing reports), where appropriate, and Rule 6160E to refer to trades that have been treated as locked-in “and sent to DTCC.” The amendments proposed herein are identical to the rules relating to the NASD/NSX TRF,<sup>9</sup> and are substantially similar to the rules relating to the NASD/Nasdaq TRF.<sup>10</sup>

The proposed rule change will provide members with another mechanism for clearing trades that they report to FINRA and will ensure consistency in the trade reporting rules relating to the TRFs, to the extent practicable.

FINRA has filed the proposed rule change for immediate effectiveness and requested a waiver of the 30-day operative delay. FINRA proposes that the proposed rule change will be operative on September 19, 2007, by which date the NASD/NYSE TRF will have made the necessary systems changes to implement this proposed rule change.

## 2. Statutory Basis

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<sup>9</sup> See NASD Rules 4632C(d), 6130C(a), 6140C and 6160C. Rule 6130C(a) was recently amended by proposed rule change SR-FINRA-2007-003, which was filed for immediate effectiveness, but is not yet operative. See Securities Exchange Act Release No. 56321 (August 24, 2007), 72 FR 50425 (August 31, 2007).

<sup>10</sup> See Rules 4632(d), 6130(a), 6140 and 6160. The NASD/Nasdaq TRF offers trade comparison functionality, while the NASD/NYSE TRF and NASD/NSX TRF accept locked-in trades only. The pertinent rules reflect this difference in functionality.

FINRA believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act,<sup>11</sup> which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will assist members in complying with their reporting obligations by providing another mechanism for members to clear trades reported to FINRA.

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

FINRA has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>13</sup> Because FINRA has designated the foregoing proposed rule change as one that: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and

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<sup>11</sup> 15 U.S.C. 78o-3(b)(6).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

Rule 19b-4(f)(6) thereunder. As required under Rule 19b-4(f)(6)(iii), FINRA provided the Commission with written notice of its intention to file the proposed rule change at least five business days prior to filing the proposal with the Commission or such shorter period as designated by the Commission.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has asked the Commission to waive the 30-day operative delay because of the imminent closing of the NASD/BSE TRF, which is expected to occur on or before September 21, 2007. According to FINRA, a FINRA member that currently participates only in the NASD/BSE TRF seeks to report trades to the NASD/NYSE TRF after the NASD/BSE TRF closes. FINRA states that the member currently is performing systems testing with the NASD/NYSE TRF so that it can fully comply with its reporting obligations following the closing of the NASD/BSE TRF. The proposal would accommodate this (and any other) FINRA member that, for systems or business reasons, chooses to use the NASD/NYSE TRF as an alternative facility through which to report trades to FINRA, but that may also need a facility through which to clear those trades.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because, as noted above, the proposed rules are identical, or substantially similar, to the rules governing the NASD/NSX TRF and the NASD/Nasdaq TRF.<sup>14</sup> In addition, the proposal will provide an additional mechanism for members to submit trades to NSCC for clearance and settlement in light of the imminent closing

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<sup>13</sup> 17 CFR 240.19b-4(f)(6).

of the NASD/BSE TRF.<sup>15</sup> For these reasons, the Commission designates the proposal to be operative on filing with the Commission.

At any time within 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 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-2007-015 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2007-015. 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

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<sup>14</sup> See notes 9 and 10, *supra*, and accompanying text.

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 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the 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-2007-015 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.<sup>16</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>15</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>16</sup> 17 CFR 200.30-3(a)(12).