

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56571; File No. SR-FINRA-2007-001)

September 28, 2007

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change Relating to the Reporting of Foreign Equity Securities to the Order Audit Trail System

I. Introduction

On July 31, 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”) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change relating to reporting of order information for foreign equity securities to the Order Audit Trail System (“OATS”). The proposed rule change was published for comment in the Federal Register on August 9, 2007.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

NASD Rules 6950 through 6958 (“OATS Rules”) impose obligations on member firms to record in electronic form and report to OATS on a daily basis certain information regarding orders in Nasdaq-listed equity securities originated, received, transmitted, modified, canceled, or

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 56199 (August 3, 2007), 72 FR 44899 (the “Notice”).

executed by members. FINRA integrates the OATS information with quote and transaction information from a number of different sources to create a time-sequenced record of orders, quotes, and transactions.

Currently, a member has recording and reporting obligations under the OATS Rules only with respect to orders in Nasdaq-listed equity securities. Beginning on February 4, 2008, members also will be required to record and report order information regarding all OTC equity securities, as defined in NASD Rule 6951.⁴ The definition of “OTC equity security” encompasses essentially all foreign equity securities, except those that are listed on a U.S. national securities exchange.

After approval of NASD-2005-101, FINRA indicated that numerous member firms and industry organizations raised issues with its staff regarding the breadth of the application of the OATS Rules to foreign equity securities, as well as issues presented by the lack of U.S. symbols for many foreign securities; the programming difficulties associated with tracking trades in foreign symbols and currencies; and the fact that, for many firms, orders for foreign securities are handled by foreign affiliates that are not currently set up to record and report OATS information. In addition, FINRA noted that many trades in foreign equity securities are routed to foreign broker-dealers and executed on a foreign stock exchange. Consequently, pursuant to the OATS Rules although FINRA would receive OATS information regarding the origination and routing of such orders, FINRA would not receive execution reports, and FINRA would not have

⁴ See Securities Exchange Act Release No. 54585 (October 10, 2006); 71 FR 61112 (October 17, 2006) (SR-NASD-2005-101); NASD Notice to Members 06-70 (December 2006); see also Securities Exchange Act Release No. 55440 (March 9, 2007), 72 FR 12852 (March 19, 2007) (SR-NASD-2007-019).

trade report data to consolidate with the OATS data.⁵

In response to these concerns, FINRA proposed to amend Rule 6952 to exclude certain orders and transactions in foreign equity securities from the OATS recording and reporting requirements. With this change members will only have to record and report order information regarding foreign equity securities only in those instances where any resulting execution is subject to the transaction reporting requirements in Rule 6620. Members would not be required to record and submit information to FINRA for orders in a foreign equity security that do not result in a trade report to FINRA.⁶ FINRA will receive order information for the same transactions for which FINRA receives trade report information. FINRA believes this change strikes the appropriate balance enabling FINRA to effectively monitor its members' compliance with their order handling requirements while avoiding overly burdensome reporting requirements.

In addition, FINRA proposed to permit firms to use Form T to report required OATS information instead for reporting through the firm's normal OATS reporting channels in instances where a firm has a reporting obligation in a foreign equity security, but does not have a U.S. symbol assigned to it at the time of the trade.

III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to

⁵ Trade reporting requirements under NASD Rule 6620 do not extend to a member's transactions in foreign equity securities executed on and reported to a foreign securities exchange or transactions executed over-the-counter in a foreign country that are reported to the regulator of securities markets for that country. See NASD Rule 6620(g); Securities Exchange Act Release No. 55745 (May 11, 2007), 72 FR 27891 (May 17, 2007) (SR-NASD-2007-030).

⁶ See the Notice at 44900-44901 for examples of trade reporting scenarios.

a national securities association.⁷ In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,⁸ which, among other things, requires that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change addresses concerns unique to OATS reporting requirements for orders in foreign equity securities in a manner consistent with the Act, and strikes an appropriate balance between ensuring that FINRA can effectively monitor members' compliance with their order handling obligations and avoiding overly burdensome reporting requirements. Members will continue to be required to record and report OATS data to FINRA in those instances where a resulting execution in a foreign equity security is subject to a transaction reporting requirement pursuant to Rule 6620(g). Therefore, FINRA will receive OATS data that it can use in connection with trade reports to effectively monitor its members' activities in foreign equity securities. However, members will be relieved of the obligation to record and report OATS data to FINRA in instances where there is not a transaction reporting requirement.

Further, the Commission believes that allowing members to report required OATS data for orders in a foreign equity security that has not been assigned a symbol at the time of the reportable event on Form T instead of through a member's normal OATS report channels will allow members to fulfill their trade reporting obligations and OATS obligations more efficiently while still ensuring the FINRA receives the information it requires to effectively monitor its members' trading activity in foreign equity securities.

⁷ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78o-3(b)(6).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-FINRA-2007-001), be, and hereby is, approved. It will become operative on February 4, 2008.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

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Deputy Secretary

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).