SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57681; File No. SR-FINRA-2008-011)

April 17, 2008

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Amend the Trade Reporting Structure and Require Submission of Non-Tape Reports to Identify Other Members for Agency and Riskless Principal Transactions

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 28, 2008, 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, II, and III below, which Items have been substantially prepared by the FINRA. 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 its trade reporting rules applicable to over-the-counter ("OTC") equity transactions[3] to: (1) replace the current market maker-based trade reporting framework with an "executing party" framework; and (2) require that any member with the trade reporting obligation under FINRA rules that is acting in a riskless principal or agency capacity

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 Specifically, OTC equity transactions are: (1) transactions in NMS stocks, as defined in Rule 600(b) of Regulation NMS under the Act, effected otherwise than on an exchange, which are reported through the Alternative Display Facility ("ADF") or a Trade Reporting Facility ("TRF"); and (2) transactions in "OTC Equity Securities," as defined in NASD Rule 6610 (e.g., OTC Bulletin Board and Pink Sheets securities), Direct Participation Program ("DPP") securities and PORTAL equity securities, which are reported through the OTC Reporting Facility ("ORF"). The ADF, TRFs and ORF are collectively referred to herein as the "FINRA Facilities."

on behalf of one or more other members submit non-tape report(s) to FINRA, as necessary, to identify such other member(s) as a party to the trade. The text of the proposed rule change is available at FINRA, the Commission's Public Reference Room, and www.finra.org.

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

Trade Reporting Structure

Currently, the following structure is in place for purposes of reporting most OTC equity transactions to FINRA: (1) in transactions between two market makers, the sell-side reports; (2) in transactions between a market maker and a non-market maker, the market maker reports; (3) in transactions between two non-market makers, the sell-side reports; and (4) in transactions between a member and either a non-member or customer, the member reports.[4] This reporting structure can result in confusion, delays and double-reporting, as the parties to a trade attempt to

[4] See NASD Rules 4632(b) and 6130(c) relating to the NASD/Nasdaq TRF; 4632A(b) relating to the ADF; 4632C(b) and 6130C(c) relating to the NASD/NSX TRF; 4632E(b) and 6130E(c) relating to the NASD/NYSE TRF; and 6130(c) and 6620(b) relating to the ORF.

determine which party has the trade reporting obligation. Today, a firm's status as a market maker may not always be apparent to the contra-party to a trade and, increasingly, firms' proprietary desks (other than their market making desks) are handling and executing transactions in equity securities. In addition, members are required to report whether any applicable exception or exemption to Rule 611 of Regulation NMS (the Order Protection Rule) applies to a transaction, which is information that may not be readily known to the party with the reporting obligation if it is not the executing broker to the transaction, e.g., whether the executing broker has routed intermarket sweep orders in compliance with Rule 611(b)(6).

Accordingly, FINRA is proposing to adopt a simpler, more uniform structure for purposes of reporting OTC equity transactions to FINRA. Specifically, FINRA is proposing to amend NASD Rules 4632(b), 4632A(b), 4632C(b), 4632E(b), 6620(b) and 6920(b) to require that for transactions between members, the "executing party" report the trade to FINRA. For transactions between a member and a non-member or customer, the member would report the trade.[5]

FINRA is proposing to define "executing party" as the member that receives an order for handling or execution or is presented an order against its quote, does not subsequently re-route the order, and executes the transaction. In certain limited circumstances, it may not be clear

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For purposes of reporting transactions in DPP securities to FINRA, NASD Rule 6920(b) requires that in a transaction between two members, the member representing the sell-side report and in a transaction between a member and customer, the member report.

5 In addition, FINRA is proposing to amend NASD Rules 6130(c), 6130C(c) and 6130E(c) to delete the duplicative rule provisions in subparagraphs (1) through (4) and cross-reference NASD Rules 4632(b) and 6620(b), 4632C(b) and 4632E(b), respectively.

FINRA also notes that the proposed executing party reporting structure would apply to the reporting of transactions in PORTAL equity securities to FINRA. Pursuant to NASD Rule 6732(a)(3), the member with the obligation to report such transactions to FINRA is determined in accordance with NASD Rule 6620(b).

which member should be deemed the executing party for trade reporting purposes (e.g., manually negotiated trades via the telephone). Accordingly, FINRA is proposing to require expressly that for transactions between two members where both members may satisfy the definition of executing party, the member representing the sell-side shall report the transaction to FINRA, unless the parties agree otherwise and the member representing the sell-side contemporaneously documents such agreement. In such instances, the sell-side will be presumed to be the member with the trade reporting obligation unless it can demonstrate there was an agreement to the contrary, e.g., contemporaneous notes of a telephone conversation or notation on the order ticket. FINRA believes that this approach will establish an objective standard for determining the reporting obligation in these circumstances, while affording the parties flexibility if, for example, the member representing the buy-side is the party that knows the material terms and details of the trade and thus is in the better position to report the trade.

Under the proposed rule change, alternative trade systems, ("ATSs"), including electronic communications networks, ("ECNs"), would be the executing party and have the reporting obligation where the transaction is executed on the ATS. If an ATS routes an order to another member for handling and/or execution, then the other member would be the executing party and have the reporting obligation under the proposed rule change. If an ATS routes an order to a non-member that is executed OTC, then the ATS would report the trade. Accordingly, FINRA is proposing to delete subparagraphs (5) through (7) from NASD Rules 6130(c), 6130C(c) and 6130E(c) relating to trade reporting by a "Reporting ECN."[6] Under the current rules, a Reporting ECN is required to ensure that trades are reported in accordance with one of

[6] "Reporting ECN" generally is defined in NASD Rules 6110, 6110C and 6110E as an electronic communications network or alternative trading system, as those terms are defined in SEC Rule 600(b) of Regulation NMS.

three enumerated methods and must notify FINRA in writing of the method of reporting for each of its subscribers.[7] FINRA notes that today, most ATSs elect to report transactions to FINRA using the first reporting method, i.e., the ATS submits the trade report and identifies itself as the Reporting Party. Thus, FINRA believes that the proposed rule change would clarify the reporting requirements for ATSs and would better align the rules with current trade reporting practices.

Finally, FINRA is proposing to make certain technical conforming changes, including to (1) delete NASD Rules 4632(b)(5), 4632C(b)(5), 4632E(b)(5), 6620(b)(5) and 6920(b)(3) relating to reporting by a Reporting ECN; (2) delete the definitions of, and references to, "Reporting ECN," "Reporting Market Maker" and "Reporting Order Entry Firm" in NASD Rules 6110, 6110C and 6110E, which terms would be obsolete as a result of the proposed rule change; and (3) amend NASD Rules 6130(d)(5), 6130C(d)(5) and 6130E(d)(5) to replace the terms "Market Maker side" and "Order Entry side" with "MMID or Reporting Party side" and "OEID or non-Reporting Party side," respectively.

FINRA believes that the proposed rule change would result in more accurate and timely trade reporting and make the trade reporting process less cumbersome for members. The proposed rule change would ensure that the member with the trade reporting obligation is the party that knows the material terms and details of the transaction, including any exceptions or exemptions to the Order Protection Rule that may apply to the trade. Furthermore, many members have entered into agreements to permit the executing party to report on behalf of the member with the reporting obligation under FINRA's current rules. Thus, FINRA believes that,

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[7] FINRA notes that the three reporting methods apply only for purposes of reporting trades to a TRF or the ORF. There is no comparable provision relating to reporting trades to the ADF.

to a large extent, the proposed rule change would be consistent with current trade reporting practices.

Submission of Non-Tape Reports to Identify Other Members for Agency and Riskless Principal Transactions

As a general matter, FINRA trade reporting rules require that a member that is a party to an OTC trade be identified in trade reports submitted to FINRA. Each trade report submitted for public dissemination purposes (or "tape report") generally only allows for the identification of two parties. Thus, where a FINRA member executes a trade in a riskless principal[8] or agency capacity on behalf of another member, or matches, as agent, the orders of two or more members, the tape report will not identify all members involved in the trade. In such circumstances, additional "non-tape reports," i.e., reports that are not submitted to the tape for public dissemination,[9] would need to be submitted to identify all members involved in the trade.

Today, some members submit non-tape reports to FINRA identifying the other members involved in the trade, while other members do not. FINRA trade reporting rules generally are not specific in this regard because, for the most part, they reflect the traditional two-party trade model where a broker-dealer acts as principal or as agent for a non-broker-dealer customer. Industry business models have evolved to include more trades where one broker-dealer acts as agent or riskless principal for another broker-dealer and order management systems and ATSs can simultaneously match one or more broker-dealer orders on one or both sides of a trade.

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8 For purposes of FINRA trade reporting rules applicable to equity securities, a "riskless principal" transaction is a transaction in which a member, after having received an order to buy (sell) a security, purchases (sells) the security as principal and satisfies the original order by selling (buying) as principal at the same price.

9 Non-tape reports can be (1) "non-tape, non-clearing," meaning that the report is submitted to FINRA solely for regulatory purposes, or (2) "clearing-only," meaning that

To address these changes, FINRA is proposing to adopt NASD Rules 4632(d)(4), 4632A(e)(1)(D), 4632C(d)(4), 4632E(d)(4), 6620(d)(4) and 6920(d)(5) to require that any member with the obligation to report the trade under FINRA rules that is acting in a riskless principal or agency capacity on behalf of one or more other members submit to FINRA one or more non-tape report(s) identifying such other member(s) as a party to the transaction, if such other member(s) is not identified on the initial trade report or a report submitted to FINRA to reflect the offsetting leg of a riskless principal transaction. In addition, FINRA is proposing to amend NASD Rule 6732(a)(3), which currently cross-references the trade reporting structure in NASD Rule 6620(b), to also cross-reference NASD Rule 6620(d), thereby making the proposed reporting requirement applicable to PORTAL equity security transactions. A member that matches, as agent, the orders of multiple members on one or both sides of the trade would be required to submit multiple non-tape reports, as necessary, to identify all members on whose behalf the member was acting.

For example, where Member A, as agent or riskless principal on behalf of Member B, executes an OTC trade with Member C, and Member A has the obligation to report the trade to FINRA, Member A also would be required to submit a non-tape report to FINRA to indicate that it was acting on behalf of Member B. By way of further example, where Member A matches, as agent, the orders of Member B and Member C and submits to FINRA a tape report between Member A and Member C, Member A also would be required to submit a non-tape report to identify Member B as a party to the trade. In this example, if Member A were to report the trade to the tape as an agency cross (such that neither Member B nor Member C is identified on the

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the report is submitted to FINRA for clearing, i.e., for submission by FINRA to the National Securities Clearing Corporation (and perhaps also regulatory purposes).

tape report), then Member A would be required to submit two non-tape reports to identify Members B and C. In these examples, Member A can satisfy its reporting obligation under the proposed rule change by submitting a clearing-only report, if necessary to clear the offsetting leg(s) of the transaction through a FINRA Facility. However, if the parties do not need to clear the offsetting leg(s) of the transaction through a FINRA Facility, then Member A would be required to submit a non-tape, non-clearing report(s). Additionally, if Member A is required to submit a non-tape report to comply with applicable riskless principal reporting requirements under FINRA rules[10] and such report identifies Member B, then Member A would have no separate reporting obligation under the proposed rule change.

The proposed reporting requirement would only apply to the member that has the responsibility under FINRA rules to report the trade to FINRA (i.e., the "executing party" in a trade between two members, as discussed above). For example, where Member A, as agent on behalf of Member B, and Member C execute an OTC trade, and Member C has the obligation to report the trade to FINRA, Member A would not be required under the proposed rule change to submit a non-tape report to indicate that it was acting on behalf of Member B.

However, the proposed rule change expressly would not negate or modify the requirements for reporting riskless principal transactions under FINRA rules. Thus, drawing on the example in the paragraph above, if Member A is acting as riskless principal (as opposed to agent) on behalf of Member B, Member A currently is required to submit a non-tape report to

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[10] If an OTC riskless principal transaction is not reported to FINRA in a single tape report properly marked as riskless principal, then two separate reports must be submitted: (1) a tape report to reflect the initial leg of the transaction and (2) a non-tape report to reflect the offsetting, "riskless" leg of the transaction, with the correct capacity of riskless principal. See NASD Rules 4632(d)(3)(B), 4632A(e)(1)(C)(ii), 4632C(d)(3)(B), 4632E(d)(3)(B) and 6620(d)(3)(B).

reflect the offsetting leg of the transaction under FINRA riskless principal rules, if the tape report does not properly reflect Member A's capacity as riskless principal.[11] This requirement would not change under the proposed rule change. Additionally, the proposed rule change would not change the reporting requirements applicable to riskless principal transactions with a customer.

FINRA notes that the proposed reporting requirement would not apply to transactions that are executed on and reported through an exchange. Today, where the initial leg of a riskless principal or agency transaction is executed on an exchange, members are not required to report either leg of the transaction to FINRA. The initial leg of the transaction is reported through the exchange (and therefore must not be reported to FINRA), and members have the option of submitting a non-tape (typically, a clearing-only) report to FINRA for the offsetting leg of the transaction. Pursuant to the proposed rule change, members would continue to have the option of submitting a non-tape report for riskless principal and agency transactions where the initial leg is executed on an exchange; however, there would continue to be no obligation to submit a non-tape report for such trades. Thus, for example, where Member A, as agent or riskless principal on behalf of Member B, executes a trade on an exchange, the trade will be reported to the tape by the exchange and, under the proposed rule change, Member A would not be required to submit a non-tape report to FINRA to indicate that it was acting on behalf of Member B. However, Member A would be permitted to submit a clearing-only report to clear the offsetting leg of the transaction between Member A and Member B through a FINRA Facility.[12]

To clarify the scope and application of the proposed reporting requirement, FINRA is proposing to include several examples in the proposed rule text. FINRA notes that these

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[11] If Member A's capacity is properly marked as riskless principal on the tape report, Member A would not be required to submit a non-tape report to FINRA.

examples are not intended to represent all possible trade reporting scenarios under the proposed rule change. Additionally, consistent with the definition of "riskless principal" in other FINRA rules applicable to OTC equity trade reporting, FINRA is proposing to amend the definition of "riskless principal transaction" in NASD Rule 6910 to clarify that a member may act in a riskless principal capacity on behalf of another broker-dealer as well as a customer.[13]

Finally, FINRA notes that because members would be submitting non-tape reports, the 90-second reporting requirement under FINRA trade reporting rules would not apply. Thus, members generally would have until the end of the day on trade date to submit the requisite non-tape reports.[14]

FINRA believes that the proposed rule change would enhance FINRA staff's ability to create a complete and accurate audit trail and assist in the automated surveillance of various customer protection and market integrity rules.

Many members today submit clearing-only reports to FINRA in instances where the proposed reporting requirement would apply, e.g., if a member needs to clear the offsetting leg of an agency transaction through a FINRA Facility or if a member elects under FINRA rules to report an OTC riskless principal trade in related tape and non-tape reports. Thus, for some members, the proposed rule change may not require any changes to current reporting practices and systems. For other members, however, the proposed rule change would require systems

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12 See FINRA Regulatory Notice 07-38 (August 2007).

13 FINRA also is proposing a technical change to insert paragraph headings for ease of reference in NASD Rules 4632(d), 4632A(e)(1), 4632C(d), 4632E(d), 6620(d) and 6920(d).

14 In certain circumstances, however, members must submit non-tape reports contemporaneously with trade execution, e.g., to qualify for the exemption from the requirements of IM-2110-2 (Trading Ahead of Customer Limit Order) for riskless principal transactions.

changes, e.g., if a member does not need to clear the offsetting leg of an agency transaction through a FINRA Facility. Additionally, where a member reports a riskless principal transaction to FINRA in a single properly marked tape report, a non-tape report would be required under the proposed rule change if the member is acting on behalf of another member.

FINRA will announce the operative date of the proposed rule change on its website. In recognition of the technological changes that the proposed rule change will require, the operative date will be (1) at least 90 days following Commission approval for transactions executed on ATSs, including electronic communications networks; and (2) at least 180 days following Commission approval with respect to all other transactions. FINRA believes that a shorter implementation period is appropriate for ATSs because, as noted above, most ATSs currently are the reporting party for transactions executed on the ATS and some voluntarily submit non-tape reports to reflect all FINRA members that are parties to a trade.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[15] 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, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change to amend the trade reporting structure will result in more accurate and timely trade reporting and thus enhance market transparency. Additionally, FINRA believes that the proposed rule change to require the submission of non-tape reports to identify other members for agency and riskless principal transactions will promote a more complete and accurate audit trail.

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[15] 15 U.S.C. 78o-3(b)(6).

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

In September 2007, FINRA published Regulatory Notice 07-46 ("Notice") soliciting comment on a proposal to adopt a simpler and more uniform trade reporting structure. Nine comment letters were received in response to the Notice.[16]

All of the commenters support the adoption of a new trade reporting structure, asserting that the current structure can be confusing and create delays and reporting errors. Seven of the nine commenters support the proposed executing party reporting structure, asserting that this structure is the most logical and efficient approach.[17] These commenters assert that the executing party knows the material terms and details of the transaction, as well as any Order

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16 See Letters from Liquidnet, Inc., to Office of the Corporate Secretary, FINRA, dated October 26, 2007 ("Liquidnet"); Archipelago Trading Services, Inc., to Barbara Z. Sweeney, Office of the Corporate Secretary, FINRA, dated November 6, 2007 ("ArcaEdge"); Financial Information Forum, to Barbara Z. Sweeney, Office of the Corporate Secretary, FINRA, dated November 8, 2007 ("FIF"); Pipeline Trading Systems LLC, to Barbara Z. Sweeney, Office of the Corporate Secretary, FINRA, dated November 12, 2007 ("Pipeline"); Automated Trading Desk, LLC, to Barbara Z. Sweeney, Office of the Corporate Secretary, FINRA, dated November 12, 2007 ("ATD"); TD AMERITRADE, Inc., to Barbara Z. Sweeney, Office of the Corporate Secretary, FINRA, dated November 15, 2007 ("TD AMERITRADE"); UBS Securities LLC, to Barbara Z. Sweeney, Office of the Corporate Secretary, FINRA, dated November 15, 2007 ("UBS"); The Securities Industry and Financial Markets Association, Barbara Z. Sweeney, Office of the Corporate Secretary, FINRA, dated November 16, 2007 ("SIFMA"); and BNY ConvergEx Execution Solutions LLC, Charles Schwab & Co., Inc., National Financial Services LLC and Pershing LLC, to Barbara Z. Sweeney, Office of the Corporate Secretary, FINRA, dated November 30, 2007 ("BNY").

17 FIF, Pipeline, ATD, TD AMERITRADE, UBS, SIFMA and BNY.

Protection Rule exceptions or exemptions that apply to the trade,[18] and thus is in the best position to report in a timely manner[19] and to correct reporting errors.[20] In addition, several commenters note that industry practice is for executing parties to trade report; most executing parties already have established systems to trade report and many firms have entered give-up agreements to replicate the executing party reporting structure.[21]

One commenter states that it is unclear whether the advantages of Qualified Service Representative (QSR) agreements would remain under the proposed executing party reporting structure and strongly urges that any changes continue to keep the QSR process intact.[22] FINRA notes that a QSR agreement is a National Securities Clearing Corporation agreement and, for FINRA purposes, merely establishes that one party can send a trade to clearing on behalf of the other party. A give up agreement still is required for a member to report trade information to a FINRA Facility on behalf of another member, even if the parties have a QSR agreement in effect.[23] This proposed rule change would not change the QSR process or member obligations with respect to give up agreements.

In the Notice, FINRA specifically requested comment on how "executing party" should be defined. The commenters generally suggest that the "executing party" should be defined as the party that receives the order electronically for execution, does not subsequently re-route the order, and agrees to execute the trade, or in other words, the broker that is the "final recipient"

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18 FIF, ATD, UBS and SIFMA.

19 Pipeline and UBS.

20 ATD.

21 ATD, TD AMERITRADE and BNY.

22 TD AMERITRADE.

23 See NASD Member Alert: Notice to All TRF, ADF and Other NASD Facility Participants Regarding AGU and QSR Relationships (January 25, 2007).

and determines the price.[24] One commenter states that in the electronic marketplace, the identity of the order entry broker generally will be readily apparent based on which party is initiating or seeking an execution, and the executing party's identity will be equally apparent based on which party is receiving the order for execution.[25] This commenter provides the following example: A displays a limit order to sell 100 shares at $10. B routes an order to buy 100 shares against A's displayed order. In this example, it is clear that A is the executing broker and B is the order entry broker; B initiated and sought out an execution against A's displayed limit order.[26] As discussed above, FINRA is proposing to define "executing party" substantially as proposed by these commenters.

In instances of telephone orders, three commenters believe that the same approach should be followed (i.e., the executing party is the "answering" or "receiving" or "responding" broker), unless the parties agree to the contrary.[27] One commenter believes that in the case of telephone trades, the sell-side member should be the reporting party,[28] while another commenter asserts that the current trade reporting structure should apply in such instances.[29] Additionally, one commenter asserts that the executing party may not be clear when a member requests a quote from another member, receives a quote and then agrees to trade at the quoted price, and suggests that the member responding to the request for a quote (i.e., the price-making firm) should be

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24 FIF, ATD, UBS, SIFMA and BNY.

25 ATD.

26 ATD.

27 ATD, SIFMA and BNY.

28 FIF.

29 UBS.

deemed the executing party.[30] As discussed above, FINRA is proposing to require that where it may be difficult to determine which member satisfies the definition of "executing party," such as telephone and other manually negotiated trades, the member representing the sell-side report, unless the parties agree otherwise. Several commenters note that in today's market, the number of telephone negotiated trades is relatively small compared to the number of trades involving the routing of electronic orders, and thus the instances where it would not be clear which member is the executing party should be limited.[31] In the words of one commenter, "[a]ll but a tiny fraction of orders in the current marketplace are routed electronically" and as such, "in the vast majority of transactions, there is no doubt about which entity is the Executing Broker."[32]

Two commenters support a sell-side reporting structure, whereby the member representing the sell-side would report a trade between members.[33] One commenter asserts that in all cases, it would be clear which party is selling and which party is buying, but the distinction between the executing party and introducing broker could be unclear in certain cases.[34] FINRA disagrees and believes that where Member A, an introducing broker, routes an order for handling and/or execution to Member B, and Member B does not re-route the order and executes the trade, it is clear that Member B is the executing party. This commenter also asserts that in a trade between two brokers, the selling broker should be the reporting party, but the brokers should have full flexibility to override this default rule and designate the buyer as the reporting

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30 BNY.

31 UBS, SIFMA and BNY.

32 BNY.

33 Liquidnet and ArcaEdge.

34 Liquidnet.

party.[35] FINRA believes that the determination of which member has the trade reporting obligation should not be subject to agreement between the parties, except in limited circumstances as discussed above, as that approach would result in confusion and possible under or double reporting. FINRA notes, however, that members can enter into give up agreements under FINRA rules, whereby one member can trade report on behalf of the other member, while the member with the reporting obligation under FINRA rules remains responsible for trades submitted on its behalf.

The second commenter supports sell-side reporting in light of the problems with the current market maker-based reporting structure, noting that these problems are compounded in the context of ATS trades, where non-subscribers may not recognize that the reporting responsibility lies with the ATS.[36] As discussed above, under the proposed executing party structure, it would be clear that an ATS has the reporting responsibility where the trade is executed on the ATS.

The commenters opposing the sell-side reporting structure assert that this approach would be less efficient and could increase the rate of unreported or inaccurately reported trades.[37] These commenters further assert that a sell-side broker that is not also the executing party will not have access to necessary information, such as exceptions and exemptions under the Order Protection Rule, may not be able to easily obtain this information and will not be able to independently verify this information.[38] Additionally, another commenter asserts that while

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35 Liquidnet.

36 ArcaEdge.

37 FIF, Pipeline and BNY.

38 FIF, SIFMA and BNY.

an originating broker would be the seller if its sale were executed by the first broker to whom it routed its orders, frequently re-routed orders could make it difficult to determine which party has the reporting responsibility under a sell-side structure.[39] Furthermore, the commenters assert that a sell-side reporting structure would be costly because it would require members that currently do not trade report to implement trade reporting systems.[40] FINRA agrees with these commenters, and as discussed above, is proposing to adopt the executing party trade reporting structure.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which FINRA consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

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:

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39 Pipeline.

40 TD AMERITRADE and BNY.

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-2008-011 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-FINRA-2008-011. 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 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 the 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 available publicly. All submissions should refer to File Number SR-FINRA-2008-011 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.[41]

Florence E. Harmon
Deputy Secretary

[41] 17 CFR 200.30-3(a)(12).