SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58903; File No. SR-FINRA-2008-011)

November 5, 2008

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change to Amend the Trade Reporting Structure and Require Submission of Non-Tape Reports that Identify Other Members Who Participated in Agency and Riskless Principal Transactions as Modified by Amendments Nos. 1 and 2

I. Introduction

On March 28, 2008, the Financial Industry Regulatory Authority, Inc., ("FINRA") filed with the Securities and Exchange Commission ("SEC") 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 to amend its trade reporting rules applicable to over-the-counter ("OTC") equity transactions. The proposed rule change was published for comment in the Federal Register on April 24, 2008.[3] The Commission received four comment letters on the proposed rule change.[4]

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

2 17 CFR 240.19b-4.

3 See Securities Exchange Act Release No. 57681 (April 17, 2008), 73 FR 22186 ("Notice").

4 See letters from Romeo Bermudez, Chief Compliance Officer, Direct Edge ECN LLC, to Florence E. Harmon, Acting Secretary, Commission, dated May 13, 2008 ("Direct Edge Letter"); Eric Swanson, General Counsel, BATS Trading, Inc, to Florence E. Harmon, Acting Secretary, Commission, dated May 14, 2008 ("BATS Letter"); Ann Vlcek, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association ("SIFMA") to Florence E. Harmon, Acting Secretary, Commission, dated May 15, 2008 ("SIFMA Letter"); Philip M. Pinc, Vice President, Counsel, National Stock Exchange, Inc. ("NSX"), to Florence E. Harmon, Acting Secretary, Commission, dated May 29, 2008 ("NSX Letter").

On October 9, 2008, FINRA filed Amendment No. 1 to the proposed rule change.[5] November 3, 2008, FINRA filed Amendment No. 2.[6] This order approves the proposed rule change, as amended.

II. Description of Proposed Rule Change

A. Summary

FINRA has proposed to amend its trade reporting rules applicable to OTC equity transactions[7] 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 on behalf of one or more other members submit non-tape reports to FINRA, as necessary, to identify such other member(s) as a party to the trade.

B. Description of Proposed Rule Change

1. 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

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5 In Amendment No. 1, FINRA made technical changes to the rule text to reflect changes approved by the Commission in SR-FINRA-2008-021, which renumbered certain rules and replaced references to "NASD" with "FINRA." See Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008).

6 In Amendment No. 2, FINRA clarified that the implementation date for this proposal rule change would be 180 days from the date of this approval order. The Commission is not publishing the amendment for comment.

7 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."

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. FINRA has proposed to amend its rules to require that for transactions between members, the "executing party" reports the trade to FINRA and for transactions between a member and a non-member or customer, the member reports the trade.

FINRA has proposed 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 circumstances where both parties to the transaction are members, and both satisfy the definition of executing party, the member representing the sell-side would report the transaction to FINRA, unless the parties agree otherwise and the member representing the sell-side contemporaneously documents their agreement. In such instances, the sell-side would be presumed to be the member with the trade reporting obligation unless it can demonstrate that there was an agreement to the contrary.

Under the proposed rule change, an alternative trade system, ("ATS"), including an electronic communications network, ("ECN"), would be the executing party and would have the reporting obligation where the transaction is executed on the ATS. If an ATS routed an order to another member for handling and/or execution, then the other member would be the executing party and would have the reporting obligation under the proposed rule change. If an ATS routed an order to a non-member that was executed OTC, then the ATS would report the trade.

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

FINRA trade reporting rules require that trade reports submitted to FINRA identify the member that is a party to an OTC trade. Each trade report submitted for public dissemination purposes ("tape report") generally only allows for the identification of two parties. This trade reporting structure is

based on a two-party model where a broker-dealer acts as principal or as agent for a non-broker-dealer customer. The rules do not specifically speak to reporting obligations for riskless principal transactions in which one broker-dealer acts as agent or riskless principal for another broker-dealer or when order management systems and ATSs simultaneously match one or more broker-dealer orders on one or both sides of a trade. In these situations, where a FINRA member executes a trade in a riskless principal capacity[8] on behalf of another member, or matches, as agent, the orders of two or more members, the tape report does not identify all members involved in the trade.[9]

FINRA represented that industry business models have evolved to include more trades where one broker-dealer acts as agent or in a riskless principal capacity for another broker-dealer and order management systems and ATSs simultaneously match one or more broker-dealer orders on one or both sides of a trade. Therefore, FINRA has proposed 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 reports 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. This proposed reporting requirement would also be applicable to PORTAL equity security transactions.

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). It would not negate or modify the requirements for reporting riskless

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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 According to FINRA, some members submit non-tape reports identifying the other members involved in the trade.

principal transactions under FINRA rules and would not change the reporting requirements applicable to riskless principal transactions with a customer.

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; there would continue to be no obligation to submit a non-tape report for such trades.

Because members would be submitting non-tape reports, the 90-second reporting requirement under FINRA trade reporting rules would not apply. Members generally would have until the end of the day on trade date to submit the requisite non-tape reports.[10]

III. Summary of Comments

The Commission received four comment letters in response to the proposed rule change addressing different aspects of the proposal.[11] FINRA submitted a response to these comment letters.[12]

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10 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.

11 See supra note 5.

12 See Letter from Lisa C. Horrigan, Associate General Counsel, FINRA to Florence E. Harmon, Acting Secretary, Commission, dated September 9, 2008 ("FINRA Letter").

A. Executing party trade reporting structure proposal

SIFMA expressed support for the proposed executing party trade reporting structure and stated that the proposal presents workable standards for clearly identifying the member with the responsibility for reporting a trade.[13]

SIFMA requested further clarification with respect to several issues, however. First, SIMFA questioned whether members that manually negotiate a trade and seek to modify the proposed sell-side reporting default may use a previously executed "Attachment II" or other agreement to satisfy the documentation requirement under the proposed rule change. In its response to comments, FINRA explained that in a situation where two members have entered into a "give up agreement,"[14] one member can "give up" or report on behalf of another member. However, where the contra party is giving up or reporting on behalf of the member with the trade reporting obligation under FINRA rules, the give up agreement does not shift the trade reporting obligation to the contra party. FINRA explained that the member with the trade reporting obligation remains responsible for compliance with FINRA trade reporting rules and, for example, could be charged with late reporting if the member reporting on its behalf fails to submit the tape report within 90 seconds of execution. The give up agreement only permits one member to submit a trade report on behalf of another member. FINRA stated that, by contrast, the contemporaneous agreement in the context of manually negotiated trades under the proposed rule change can shift the trade reporting obligation under FINRA rules.[15]

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13 See SIFMA Letter, supra note 5.

14 The "Attachment II" is a form of give up agreement.

15 See FINRA Letter, supra note 10.

Second, SIFMA requested that FINRA confirm that the member with the trade reporting obligation – whether the executing broker, sell-side broker, or as agreed upon by members negotiating manual trades pursuant to the proposed rule change – was responsible for timely and accurate trade reporting.[16] In particular, SIMFA requested confirmation that when two members in a manually negotiated trade have properly documented an agreement as to which member is responsible for reporting the trade, the other member is not responsible for reporting deficiencies with respect to the trade.[17]

FINRA confirmed that under the proposed rule change, the member with the trade reporting obligation would be that party responsible for timely and accurate trade reporting.[18] FINRA explained that where the trade reporting obligation is shifted to the member representing the buy-side by virtue of a contemporaneously documented agreement under the proposed rule change, the member representing the sell-side is not responsible for such trade reporting deficiencies as the buy-side member's failure to submit the tape report within 90 seconds of execution.[19]

At SIFMA's request, FINRA also clarified in its response to comments that the proposed executing party trade reporting structure would not affect the processing of regulatory transaction fees pursuant to Section 3 of Schedule A to the By-Laws ("Section 3"). FINRA represented that it always bills Section 3 fees to the clearing member identified as the sell-side on the tape report,

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16 See SIFMA Letter, supra note 5.

17 Id.

18 See FINRA Letter, supra note 10.

19 Id.

and as such, it makes no difference for billing purposes which member appears on the tape report as the reporting party and which member appears as the contra party.[20]

B. Non-Tape Reporting Proposal

All four commenters addressed this aspect of the proposed rule change and raised the following issues.

First, Direct Edge, BATS, and NSX asserted that the proposed rule change does not meet the requirements of Section 15A(b)(5) of the Act[21] because it does not address the fees associated with the submission of non-tape reports.[22] The commenters explained that FINRA charges each TRF for regulation based on the volume of tape and non-tape reports submitted to the TRF and that the proposed rule change will increase the number of non-tape reports submitted to the TRFs, which will increase the regulatory charges paid to FINRA by the TRFs.[23] The commenters further explain that these increased regulatory charges will, in turn, be passed along to FINRA members because one of the TRFs, the FINRA/NSX TRF, imposes a fee on TRF participants for the submission of non-tape reports designed to generate revenues for the TRF to cover some of its regulatory costs.[24] Therefore, the commenters believe FINRA should be required to demonstrate the basis for its regulatory charges to the TRFs under Section

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20 See FINRA Letter, supra note 10.

21 15 U.S.C.78o-3(b)(5). This section provides that "[a]n association of brokers and dealers shall not be registered as a national securities association unless the Commission determines that the rules of the association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls."

22 See Direct Edge Letter, BATS Letter and NSX Letter, supra note 5.

23 Id.

24 Id.

15A(b)(5) of the Act. Without such a showing, the commenters claim that the TRFs and FINRA members are unable to make a determination as to the reasonableness of such charges.[25]

NSX, a TRF Business Member, further argues that it is competitively disadvantaged by FINRA's proposal because it has difficulty passing on FINRA's regulatory charges to its TRF customers due to the lack of transparency and predictability of those charges.[26] NSX contends that FINRA should publish for notice and comment a complete schedule of its charges for TRF regulation and explain the regulatory work that it performs relating to non-tape reports.[27]

In its response to these comments, FINRA stated that it believes that these arguments are not germane to the proposed rule change.[28] FINRA explained that its charges for regulation of TRFs are assessed pursuant to a contract between FINRA and the respective TRF Business Members and are not subject to Section 15A(b)(5) of the Act.[29] FINRA argued that the fact that a TRF Business Member may determine that, for competitive reasons, the TRF should charge TRF participants a fee to generate revenues to cover some of the regulatory costs owed to FINRA under the contract does not bring these regulatory costs within the scope of the Act and that any issue that NSX or the other TRF Business Members may have pertaining to FINRA's regulatory charges or the regulatory work FINRA performs is a matter of contract.[30]

BATS argued that if the Commission fails to require FINRA to demonstrate the reasonableness of the regulatory charges it imposes on the TRFs, members ultimately will be

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25 Id.

26 See NSX Letter, supra note 5.

27 Id.

28 See FINRA Letter, supra note 10.

29 Id.

30 Id.

charged a fee that has never been subject to regulatory scrutiny.[31] FINRA responded to this comment by explaining that the proposed rule change does not seek to modify FINRA's charges for regulation of the TRFs, and reiterating that those charges are a matter of private contract.[32] FINRA stated that any proposed rule change to impose a fee on TRF participants would be filed with the Commission.[33]

Second, DirectEdge and BATS argued that the proposed rule change would impose a requirement on members that would be duplicative of FINRA's Order Audit Trail System ("OATS") requirements and that FINRA did not explain why it could not get this information from OATS.[34]

In response to these comments, FINRA explained that the OATS rules apply only to Nasdaq-listed securities and OTC Equity Securities and not to non-Nasdaq exchange-listed securities.[35] FINRA represented that it does not receive OATS information for a large segment of transactions taking place in the OTC market today. FINRA also stated that while there is some overlap, OATS captures the life-cycle of an order, while the trade reporting rules are designed to capture information relating to executed trades. FINRA believes that the more logical place to require and store information regarding the parties to an executed trade is in the context of trade reporting rules.[36]

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31 See BATS Letter, supra note 5.

32 See FINRA Letter, supra note 10.

33 See, e.g., Securities Exchange Act Release No. 57299 (February 8, 2008), 73 FR 8915 (February 15, 2008).

34 See Direct Edge Letter and BATS Letter, supra note 5.

35 See FINRA Letter, supra note 10.

36 Id.

BATS argued that it should be a "fairly easy exercise" to match the ultimate buyer and seller of a trade executed on an ATS or ECN using OATS execution reports.[37] However, FINRA explained that its rules do not mandate the submission of OATS data in the manner described by the commenter and not all ATSs and ECNs report this way, and therefore the process of matching OATS execution reports is not as easy as the commenter suggests.[38]

Third, BATS asserted that FINRA failed to justify its need for non-tape reports, when, according to BATS, FINRA can request information relating to the ultimate buyer and seller in a given transaction directly from the executing member.[39] BATS argued that FINRA should be required to explain what has changed, either in the quality of the information it is receiving about transactions or in the regulatory requirements under which it is operating, that now makes the non-tape reports necessary or appropriate.

In response, FINRA explained that its current trade reporting rules generally reflect the traditional two-party trade model where a broker-dealer acts as principal or as agent for a non-broker-dealer customer. The rules do not adequately deal with industry business models that have evolved to include more trades where one broker-dealer acts as agent or in a riskless principal capacity for another broker-dealer and where order management systems and ATSs simultaneously match one or more broker-dealer orders on one or both sides of a trade.[40] FINRA noted that because the current trade reporting rules generally only allow for the identification of two parties, the tape report does not identify all members involved in the trade

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37 See BATS Letter, supra note 5.

38 See FINRA Letter, supra note 10.

39 See BATS Letter, supra note 5.

40 See FINRA Letter, supra note 10.

and consequently FINRA's audit trail is incomplete.[41] FINRA argued that the proposed rule change would enhance FINRA staff's ability to create a complete, accurate audit trail and assist in the automated surveillance of various customer protection and market integrity rules (e.g., to enable automated surveillance for wash sales, the audit trail must reflect the ultimate buyer and seller for any given transaction).[42]

Fourth, SIMFA requested that the Commission and FINRA defer consideration of this aspect of the proposed rule change to permit FINRA and the New York Stock Exchange LLC ("NYSE") to collaborate with each other and the industry on a more uniform approach for regulatory reporting of riskless principal and agency trades.[43] FINRA responded that while it recognizes the benefits in harmonizing regulatory reporting requirements where possible, it is important to note that the proposed rule change and the new NYSE requirement cited by SIFMA are not identical.[44] FINRA explained that the NYSE requirement relates to the mechanics of reporting riskless principal transactions effected on the NYSE by mandating the electronic linking of executions of facilitated orders to all underlying orders to qualify for an exception to NYSE Rule 92 (Limitations on Members' Trading Because of Customers' Orders).[45]

Finally, SIFMA requested clarification on several points if consideration of this aspect of the proposed rule change is not deferred. First, SIFMA asked how the requirement to submit non-tape reports for "Manning" purposes will be reconciled with the proposed end-of-day

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41 Id.

42 Id.

43 See SIFMA Letter, supra note 5.

44 See FINRA Letter, supra note 10.

45 Id.

submission of non-tape reports under the proposed rule change.[46] FINRA explained that although the 90-second reporting requirement would not apply to the submission of non-tape reports under the proposed rule change, in certain circumstances, members must submit non-tape reports contemporaneously with trade execution.[47] For example, FINRA explained, to qualify for the exemption from the requirements of NASD IM-21 10-2 (the "Manning Rule") for riskless principal transactions, a member must submit, contemporaneously with the execution of the facilitated order, a non-tape report reflecting the offsetting "riskless" leg of the transaction.[48] For purposes of the Manning Rule, "contemporaneously" has been interpreted to require execution as soon as possible, but absent reasonable and documented justification, within one minute.[49] FINRA represented that this is an existing requirement and it would not be affected by the proposed rule change, and therefore, under the proposed rule change, members would continue to report as they do today to qualify for the exemption under NASD IM-21l0-2(c)(3).[50]

Second, SIFMA asked whether the requirement to submit non-tape reports identifying all members involved in a trade would affect OATS matching requirements.[51] FINRA explained that under its current rules, where an OATS execution report is related to a trade report submitted to a FINRA facility, the OATS report must match the related trade report and FINRA stated that this requirement would apply to any non-tape report submitted under the proposed rule change.[52]

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46 See SIFMA Letter, supra note 5.

47 See FINRA Letter, supra note 10.

48 See NASD IM-2110-2(c)(3)

49 See NASD Notices to Members 95-67 (August 1995) and 98-78 (September 1998).

50 See FINRA Letter, supra note 10.

51 See SIFMA Letter, supra note 5.

52 See FINRA Letter, supra note 10.

C. Proposed Implementation

FINRA proposed that the implementation date would be (1) at least 90 days following Commission approval for transactions executed on ATSs, including ECNs; and (2) at least 180 days following Commission approval with respect to all other transactions. The commenters raise the following issues with respect to this proposed implementation schedule.

BATS stated that it did not object to the shorter period for ATSs,[53] while Direct Edge opposed the shorter implementation period for ATSs and asserted that FINRA failed to justify this approach.[54] SIFMA argued that certain ATSs should be permitted to comply with the latter of the two dates in light of the systems changes they would be required to make (e.g., an ATS that trade reports and identifies its subscriber as the reporting party or has its subscriber report the trade, or an ATS that does not submit non-tape reports today).[55] SIMFA also requested clarification that the shorter period would apply only to systems that qualify as an exchange under the Act and operate under Regulation ATS. In response to these comments, FINRA proposed to implement the proposed rule change on the same date for all members, including ATSs, at least 180 days from the date of approval by the Commission.[56]

SIFMA also requested that FINRA not implement the proposed rule change until it had published revised technical specifications.[57] In response, FINRA stated that it does not believe that the proposed rule change will result in any significant changes to applicable technical specifications, and that members would continue to populate and submit to FINRA tape and non-

53 See BATS Letter, supra note 5.

54 See Direct Edge Letter, supra note 5.

55 See SIFMA Letter, supra, note 5.

56 See FINRA Letter, supra note 10.

57 See SIFMA Letter, supra, note 5.

tape reports in the same manner as they do today.[58] Thus, FINRA does not believe that the implementation date needs to be linked to the publication of specific technical specifications.

Finally, SIFMA suggested that the non-tape reporting proposal be implemented approximately six months following implementation of the executing party trade reporting structure.[59] FINRA responded that SIFMA did not provide any reason why the system changes necessary to comply with both aspects of the proposed rule change could not be made and tested simultaneously and reiterated its position that 180 days should provide sufficient time to make all necessary systems changes.[60]

IV. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[61] In particular, the Commission believes the proposal is consistent with Section 15A(b)(6) of the Act,[62] which requires, among other things, that the Association's 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 FINRA adequately addressed the comments raised in response to the notice of this proposed rule change.

The primary purpose of this proposed rule change is to modify the rules governing trade reporting in OTC equity transactions by replacing the current market maker-based trade

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58 See FINRA Letter, supra note 10.

59 See SIFMA Letter, supra, note 5.

60 See FINRA Letter, supra note 10.

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

62 15 U.S.C. 78o-3(b)(6).

reporting framework with an "executing party" framework and by requiring that any member with the trade reporting obligation under FINRA rules that is acting in a riskless principal or agency capacity on behalf of one or more other members, submit non-tape reports to FINRA, as necessary, to identify such other member(s) as a party to the trade.

A. Trade Reporting Structure

The Commission believes that FINRA's proposal to require that for transactions between members, the "executing party" would report the trade to FINRA and for transactions between a member and a non-member or customer, the member would report the trade, establishes an objective standard for determining the reporting obligation in these circumstances, while still affording the parties flexibility to enter into agreements to shift the trade reporting obligation, when appropriate, at the parties' discretion. The proposed rule change should help to ensure that the member with the trade reporting obligation is the party that knows the material terms and details of the transaction. Therefore, the Commission believes that this will help increase overall compliance with trade reporting rules and increase the amount of accurate trade information available to FINRA.

B. Non-Tape Reporting Proposal

FINRA has also proposed to require that any member with the obligation to report a 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 reports identifying such other member(s) as a party to the transaction, if such other member is not identified on the initial trade report or a report submitted to FINRA to reflect the offsetting leg of a riskless principal transactions. The Commission believes that this proposed requirement will help to modernize FINRA's rules to adapt to the increase in trades involving riskless principal transactions. The proposed changes should help to ensure that FINRA staff

is able to create a complete, accurate audit trail through the execution of trades. The Commission believes that the information proposed to be collected by FINRA is an appropriate supplement to that already collected pursuant to FINRA's OATS requirements and will assist FINRA in automated surveillance to ensure compliance with various customer protection and market integrity rules.[63]

C. Implementation

In its response to comments, FINRA stated that it intended to implement the proposed rule change at least 180 days from the date of this approval order.[64] For purposes of clarity, in Amendment No. 2, FINRA requested that the proposed rule change be implemented 180 days from the date of this approval order. The Commission believes that this is an appropriate time frame for members to prepare to comply with the proposed rules.

63 With respect to the Commenters' concerns that this proposed rule change should be reviewed as a fee filing, the Commission agrees with FINRA that this is a matter of contract and is not the subject of this proposed rule change.

64 See FINRA Letter, supra note 10.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[65] that the proposed rule change (SR-FINRA-2008-011), as amended, is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[66]

Florence E. Harmon
Acting Secretary

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65 15 U.S.C. 78s(b)(2).

66 17 CFR 200.30-3(a)(12).