

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61165; File No. SR-FINRA-2009-085)

December 15, 2009

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Order Reporting Requirements on the Alternative Display Facility

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 December 2, 2009, the 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 constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ 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 6250 to allow end-of-day order reporting and require that participants on the Alternative Display Facility (“ADF”) provide order information to FINRA immediately upon request.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

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

In 2002, FINRA created the ADF to ensure that any FINRA member, including alternative trading systems, seeking to display quotations for NMS stocks in the over-the-counter ("OTC") market, rather than through an exchange platform, has an alternative venue through which to post its OTC quotations and report trades.⁴ Pursuant to FINRA Rule 6250(b), any ADF Trading Center that displays quotations on the ADF must record certain order and order response information and report the information to FINRA within ten seconds of receipt of the order or of any response to or action taken regarding an order, respectively. These requirements were originally included in the ADF rules to allow FINRA to ensure that ADF participants were complying with certain trading rules,

⁴ Initially, the ADF was limited to quotations and trade reports in Nasdaq securities. See Securities Exchange Act Release No. 46249 (July 24, 2002), 67 FR 49822 (July 31, 2002). In 2006, the ADF was expanded to include all NMS stocks. See Securities Exchange Act Release No. 54537 (September 28, 2006), 71 FR 59173 (October 6, 2006).

including honoring their quotations displayed on the ADF and not “backing away” from orders received against such displayed quotations.⁵

FINRA has found that receiving ADF order reporting data real-time has been of minimal value due to the very limited instances of “backing away” on the ADF and that real-time order reporting poses a significant strain on the ADF’s real-time systems capacity. To the latter point, because of capacity issues, LavaFlow, Inc. (“LavaFlow”), currently the sole ADF participant, requested that FINRA consider amending Rule 6250 to permit end-of-day order reporting rather than require ten-second order reporting. LavaFlow stated that it believed that such an amendment would address strains on the ADF’s capacity while still providing FINRA with accurate and timely order information.

Accordingly, FINRA is proposing to replace the current ten-second order reporting requirement with an end-of-day order reporting requirement; however, to ensure that FINRA has prompt access to this regulatory information if necessary (e.g., a “backing-away” complaint is made against an ADF Trading Center), the proposed rule change also requires ADF Trading Centers to provide order information to FINRA immediately upon request. Thus, the proposed rule change will improve the systems supporting the ADF and its functionality by reducing the amount of real-time reporting that must flow through ADF systems, while still providing FINRA with order information on a timely basis.⁶

⁵ See Securities Exchange Act Release No. 46249 (July 24, 2002), 67 FR 49822 (July 31, 2002). Consistent with Rule 602(b)(2) of SEC Regulation NMS, quotations on the ADF must be “firm.” See 17 CFR 242.602(b)(2); FINRA Rule 6272(b).

⁶ ADF Trading Centers would transmit the same information in the same format as currently required. Consequently, the sole effect of the proposed rule change is to provide ADF Trading Centers with additional time to report order information.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, such that FINRA can implement the proposed rule change immediately.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁷ which requires, among other things, that FINRA rules must 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 will enhance the ADF's functionality and decrease the likelihood of systems issues while continuing to ensure that FINRA has necessary regulatory information sufficient to monitor for compliance with applicable rules.

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

A copy of a letter submitted by LavaFlow requesting amendments to the ADF order reporting rule was attached to the proposed rule change.

⁷ 15 U.S.C. 78o-3(b)(6).

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

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹

At any time within 60 days of the filing of the 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

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2009-085 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-2009-085. 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 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 Exchange. 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-2009-085 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.¹⁰

Florence E. Harmon
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).