

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61105; File No. SR-FINRA-2009-082)

December 3, 2009

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Reporting of Trade Cancellations to FINRA

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 November 24, 2009, 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, II, and III below, which Items have been prepared by 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 (1) amend FINRA trade reporting rules to permit members to report trade cancellations after 5:15 p.m. Eastern Time on trade date to the FINRA/Nasdaq Trade Reporting Facility (“FINRA/Nasdaq TRF”) and the OTC Reporting Facility (“ORF”); and (2) make certain conforming changes to the rules relating to the submission of trade cancellations to the Alternative Display Facility (“ADF”). The amendments proposed herein are identical to the current rules relating to the FINRA/NYSE Trade Reporting Facility (“FINRA/NYSE TRF”) and would make FINRA rules governing the submission of trade cancellations consistent across the “FINRA Facilities.”³

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The ADF, FINRA/Nasdaq TRF, FINRA/NYSE TRF and ORF are collectively referred to herein as the “FINRA Facilities.”

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.

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

FINRA rules require members to report the cancellation of any over-the-counter trade that was previously submitted to a FINRA Facility within certain prescribed time periods.⁴ For example, if a trade executed during normal market hours (i.e., 9:30 a.m. to 4:00 p.m. Eastern Time) is canceled during normal market hours on trade date, the cancellation must be reported to FINRA within 90 seconds.⁵

The rules governing the reporting of trade cancellations to the FINRA/Nasdaq TRF and ORF are based on the traditional 5:15 p.m. "media" cut-off time (i.e., for the submission of

⁴ See Rules 6282(j), 6380A(g), 6380B(f) and 6622(f).

⁵ See Rules 6380A(g)(2)(A), 6380B(f)(2)(A) and 6622(f)(2)(A).

FINRA notes that currently, the ADF rules do not contain a 90-second reporting requirement for trade cancellations. As described more fully below, FINRA is proposing to amend the ADF rules to conform to the rules for the other FINRA Facilities in this regard.

trades for public dissemination purposes) and prohibit the reporting of trade cancellations after 5:15 p.m. on trade date.⁶ In other words, although the FINRA/Nasdaq TRF and ORF are open until 8:00 p.m., if a member does not report a trade cancellation by 5:15 p.m. on trade date, then the member must wait until the next day to report the cancellation. This means that trade cancellations are not submitted to the Securities Information Processors (“SIPs”) by the FINRA/Nasdaq TRF or to the Trade Data Dissemination Service (“TDDS”) feed by the ORF after 5:15 p.m. on trade date, and the high price/low price/last sale price calculations for the day are not updated after 5:15 p.m.⁷ By contrast, the rules relating to the ADF and FINRA/NYSE TRF do not include a 5:15 p.m. cut-off. Cancellations on trade date can be reported to these two facilities until the time they close (6:30 p.m. for the ADF and 8:00 p.m. for the FINRA/NYSE TRF),⁸ and the SIPs update the high/low/last calculations accordingly.

FINRA is proposing to amend Rules 6380A(g)(2) and 6622(f)(2) relating to the FINRA/Nasdaq TRF and the ORF, respectively, to eliminate the 5:15 p.m. cut-off and to allow members to submit reports of trade cancellations on trade date until the close of the facilities at 8:00 p.m. As a result of the proposed rule change, reports of trade cancellations submitted to the FINRA/Nasdaq TRF and ORF until 8:00 p.m. on trade date will update the high/low/last

⁶ See Rules 6380A(g)(2) and 6622(f)(2).

⁷ Market participants historically have relied on the high/low/last calculations provided by the SIPs, e.g., some market data vendors would “lock in” high/low/last for the day in their data products at the 5:15 p.m. media cut-off time, and mutual fund companies would set their daily fund net asset values based on the last sale price as of the 5:15 p.m. media cut off. FINRA does not believe that market participants today rely on the high/low/last calculations provided by the SIPs to the degree they once did. For example, today many market participants buy closing price data directly from the primary listing market for the issue. However, FINRA is requesting that the SEC specifically solicit comment on the industry’s reliance on the high/low/last calculation provided by the SIPs and/or TDDS, and in turn, the relevance of the 5:15 p.m. media cut-off today.

⁸ See Rules 6282(j)(2) and 6380B(f)(2).

calculations for the day. The text of the proposed amendments is identical to the text of current Rule 6380B(f)(2) relating to the FINRA/NYSE TRF.⁹

FINRA also is proposing to amend Rule 6282(j)(2) relating to the ADF to conform to Rule 6380B(f)(2) relating to the FINRA/NYSE TRF. Among other changes, the proposed amendments to Rule 6282(j)(2) will provide that if a normal market hours trade is cancelled during market hours on trade date, the cancellation must be reported within 90 seconds.¹⁰

FINRA believes that the proposed rule change will promote more consistent trade reporting by members by conforming the reporting requirements applicable to trade cancellations across FINRA Facilities. Additionally, the proposed rule change will enhance market transparency by eliminating systematically imposed delays in the reporting of trade cancellations to the FINRA/Nasdaq TRF and ORF.¹¹

⁹ FINRA is proposing to make a technical change to Rule 6380B(f)(2)(F) relating to the FINRA/NYSE TRF. Pursuant to SR-NASD-2007-037, FINRA proposed to amend its trade reporting rules to extend the closing time of the FINRA/NYSE TRF from 6:30 p.m. to 8:00 p.m. Eastern Time. See Securities Exchange Act Release No. 55916 (June 15, 2007), 72 FR 34499 (June 22, 2007) (notice of filing and immediate effectiveness of SR-NASD-2007-037). However, FINRA inadvertently neglected to propose to replace a reference to 6:30 p.m. with 8:00 p.m. in Rule 6380B(f)(2)(F) and is proposing to make that change in this filing.

FINRA also is proposing technical changes, where necessary, to clarify that references to “before 4:00 p.m.” mean “at or before 4:00 p.m.” and references to “after 6:30 p.m.” (or 8:00 p.m., as applicable) mean “at or after 6:30 p.m.” (or 8:00 p.m., as applicable) to close any inadvertent gaps in the rules.

¹⁰ FINRA recently filed a proposed rule change to reduce the 90-second reporting requirement to 30 seconds. See Securities Exchange Act Release No. 60960 (November 6, 2009), 74 FR 59272 (November 17, 2009) (notice of filing of SR-FINRA-2009-061). The proposed 30-second reporting requirement also would apply to trade cancellations. Depending on the timing of Commission approval of these filings, FINRA will file an amendment or separate filing, as necessary, to make conforming changes.

¹¹ FINRA notes that where a proposed rule change strictly proposes to make conforming changes to the rules applicable to one FINRA Facility that are identical to existing rules applicable to one or more other FINRA Facilities, FINRA typically would file such proposed rule change for immediate effectiveness under Section (b)(3)(A) of the Act.

FINRA will announce the effective date of the proposed rule change in a Regulatory Notice. FINRA is proposing that the implementation date will be between 45 and 90 days following the date of Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹² 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 will enhance market transparency and promote more consistent trade reporting by members.

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

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 the self-regulatory organization consents, the Commission will:

However, because the conforming changes proposed herein for the FINRA/Nasdaq TRF and ORF will impact the high/low/last calculations, FINRA is filing under Section (b)(2) of the Act to provide members and other interested parties an opportunity to comment.

¹² 15 U.S.C. 78q-3(b)(6).

(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:

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-2009-082 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-2009-082. 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 such 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 publicly available. All submissions should refer to File Number SR-FINRA-2009-082 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.¹³

Florence E. Harmon
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).