

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67385; File No. SR-FINRA-2012-032)

July 10, 2012

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify Fees and Transaction Credits Applicable to Members That Use the FINRA/NYSE Trade Reporting 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 July 2, 2012, 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. FINRA has designated the proposed rule change as “establishing or changing a due, fee or other charge” under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ 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 the FINRA Rule 7600B Series to modify fees and transaction credits applicable to members that use the FINRA/NYSE Trade Reporting Facility (the “FINRA/NYSE TRF”).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

The text of the proposed rule change is available on FINRA's website 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

Background

The FINRA/NYSE TRF is one of three FINRA facilities that FINRA members can use to report over-the-counter ("OTC") trades in NMS stocks.⁵ The FINRA/NYSE TRF is operated by The NYSE Market, Inc. ("NYSE"). In connection with the establishment of the FINRA/NYSE TRF, FINRA and NYSE entered into a limited liability company agreement (the "LLC Agreement"). Under the LLC Agreement, FINRA, the "SRO Member," has sole regulatory responsibility for the FINRA/NYSE TRF. NYSE, the "Business Member," is primarily responsible for the management of the FINRA/NYSE TRF's business affairs to the extent those affairs are not inconsistent with the regulatory and oversight functions of FINRA. As such, the

⁵ In addition to the FINRA/NYSE TRF, members have the option of reporting OTC trades in NMS stocks to the FINRA Alternative Display Facility (the "ADF") or the FINRA/Nasdaq Trade Reporting Facility (the "FINRA/Nasdaq TRF").

Business Member establishes pricing for use of the FINRA/NYSE TRF, and such pricing is implemented pursuant to FINRA rules that must be filed with the SEC and be consistent with the Act.⁶ In addition, the Business Member is obligated to pay the cost of regulation and is entitled to the profits and losses, if any, derived from the operation of the FINRA/NYSE TRF.⁷

As discussed in greater detail below, FINRA/NYSE TRF participants currently are not charged any fees, and the FINRA/NYSE TRF currently shares with its participants 100% of the market data revenue it earns. This fee and credit structure has applied since the FINRA/NYSE TRF commenced operation in April 2007, and since that time, the NYSE, as the Business Member, has funded all costs associated with operating the FINRA/NYSE TRF, including all regulatory costs, from NYSE general revenues. The NYSE has indicated that the cost of operating the FINRA/NYSE TRF has increased since 2007, in part because the FINRA/NYSE TRF's market share has grown and therefore regulatory costs have increased. Accordingly, the proposed fees and revisions to the market data revenue share [sic] program will provide revenue to help offset these increased operating costs, while allowing the FINRA/NYSE TRF to remain competitive. NYSE will continue to fund any costs associated with the FINRA/NYSE TRF that are not covered by the proposed fees and changes in the market data revenue sharing program from NYSE's general revenues.

Proposed Amendments to Rule 7610B

⁶ Because there are two FINRA Trade Reporting Facilities operated by different exchange Business Members competing for market share (the FINRA/NYSE TRF and the FINRA/Nasdaq TRF), FINRA does not take a position on whether the pricing for one TRF is more favorable or competitive than the pricing for the other TRF.

⁷ FINRA notes that the same contractual arrangement is in place for the FINRA/Nasdaq TRF, with FINRA as the SRO Member and Nasdaq as the Business Member. The LLC agreements for the FINRA/NYSE TRF and the FINRA/Nasdaq TRF were submitted as part of the rule filings to establish the respective TRFs and can be found in the FINRA Manual.

The FINRA/NYSE TRF receives revenue for transactions reported to the three tapes⁸ from the Consolidated Tape Association and Nasdaq Securities Information Processor. Pursuant to Rule 7610B, the FINRA/NYSE TRF currently shares 100% of the market data revenue it earns with FINRA members reporting trades in Tape A, Tape B and Tape C securities to the FINRA/NYSE TRF.

FINRA is proposing to adopt a tiered schedule for market data revenue sharing for the FINRA/NYSE TRF that is comparable to the tiered schedule that currently is in place for the FINRA/Nasdaq TRF under FINRA Rule 7610A.⁹ Specifically, FINRA is proposing to amend Rule 7610B to base the percentage of market data revenue shared with a FINRA member reporting trades to the FINRA/NYSE TRF on the member's "Market Share." FINRA proposes to define "Market Share" in Rule 7610B as the percentage calculated by dividing the total number of shares represented by trades reported by a member to the FINRA/NYSE TRF¹⁰ during a given calendar quarter by the total number of shares represented by all trades reported to the Consolidated Tape Association or the Nasdaq Securities Information Processor, as applicable, during that quarter. Market Share will be calculated separately for each tape. The proposed definition of "Market Share" is identical to the definition in Rule 7610A applicable to the FINRA/Nasdaq TRF.

⁸ Market data is transmitted to three tapes based on the listing venue of the security: New York Stock Exchange securities ("Tape A"), American Stock Exchange and regional exchange securities ("Tape B"), and Nasdaq Stock Market securities ("Tape C"). Tape A and Tape B are generally referred to as the Consolidated Tape.

⁹ FINRA notes, however, that the proposed tiers and percentages of revenue shared are not identical to the tiers and percentages for the FINRA/Nasdaq TRF.

¹⁰ The calculation of "Market Share" is based only on a member's trades that are reported to the Consolidated Tape Association or the Nasdaq Securities Information Processor ("tape reports") and will not include trades that are only reported for regulatory and/or clearing – and not dissemination – purposes ("non-tape reports").

Under the proposed rule change, a member with a Market Share of 0.9% or more in Tape A or Tape C, or 0.7% or more in Tape B, would receive 90% of the attributable market data revenue; a member with less than 0.9% but at least 0.5% in Tape A or Tape C, or less than 0.7% but at least 0.5% in Tape B, would receive 75%; a member with less than 0.5% but at least 0.4% in Tape A, Tape B or Tape C would receive 70%; a member with less than 0.4% but at least 0.075% in Tape A, Tape B or Tape C would receive 25%; and a member with less than 0.075% in Tape A, Tape B or Tape C would not be eligible for the market data revenue sharing program. Thus, as a general matter, market participants that make the most use of the FINRA/NYSE TRF will be eligible for the highest level of revenue sharing with others receiving progressively lower percentages. FINRA notes that the Market Share and revenue percentages for each tape are independent of each other and, as such, may subsequently be adjusted individually.¹¹

According to the NYSE, as the Business Member, the different percentages required for different tapes reflect the current extent to which participants use the FINRA/NYSE TRF to report trades in different stocks, *i.e.*, comparatively higher volumes of trades in Tape A and Tape C stocks are reported through the FINRA/NYSE TRF than in Tape B stocks. Thus for Tapes A and C, the levels of revenue sharing are tied to higher market share levels. The NYSE has indicated that for competitive reasons and in light of the cost of operating the FINRA/NYSE TRF, it has determined to sunset the 100% revenue share program. However, NYSE believes that, particularly at the lower market share levels, the percentage of revenue shared is favorable to other revenue share programs.¹² For example, a member with a Market Share of 0.45% in Tape A or Tape C would share 70% of market data revenue and a member with a Market Share

¹¹ Any change to one or more of these percentages would be subject to a proposed rule change by FINRA.

¹² See, e.g., Rule 7610A.

of 0.08% in Tape A or Tape C would share 25% of market data revenue under the proposed tiered schedule.

Proposed Amendments to Rule 7620B

Pursuant to Rule 7620B, FINRA members currently are not charged a fee for use of the FINRA/NYSE TRF. FINRA is proposing to amend Rule 7620B to begin charging members a monthly fee for use of the FINRA/NYSE TRF. Members will be charged either \$500 or \$1,000 per month beginning in the month of the member's first trade report on or after July 2, 2012, the proposed operative date of the proposed rule change. Specifically, members reporting an average of 100 trades or less per day during the calendar month will be charged \$500, and members reporting an average of more than 100 trades per day during the calendar month will be charged \$1,000. For purposes of meeting the 100 trade threshold, both tape and non-tape reports will be included; however, reversals and other modifications to previously reported trades will not be included. A member's fee could vary from month to month, depending on the number of trade reports the member submits. For example, if a member averages 90 trades per day in July, 120 trades per day in August, and 80 trades per day in September, the member will pay a monthly fee of \$500, \$1,000 and \$500, respectively. In addition, once a member's fee begins, the member will be charged a fee each month unless and until the member cancels its access to the FINRA/NYSE TRF, even if the member reports no trades to the FINRA/NYSE TRF in a given month. In that instance, the member will be charged the lower fee of \$500. The fee will be charged at the end of the calendar month; a member's trades will be counted and the appropriate fee will be assessed on the member's invoice after the month closes.

This fee includes full access to the FINRA/NYSE TRF and supporting functionality, e.g., trade submission, reversal and cancellation, and unlimited use of the Client Management Tool.

In addition to submitting, correcting, breaking, and reversing trades, the Client Management Tool currently allows users to View/Query/Export trade reports, potential trade throughs and rejected trade submissions.

As noted above, members have the option of reporting OTC trades in NMS stocks to one of three FINRA facilities. The NYSE, as the Business Member, has determined that the FINRA/NYSE TRF would be more competitive with these other facilities if users are charged a flat fee for access to the complete range of functionality offered by the FINRA/NYSE TRF rather than a separate fee for each activity (e.g., a per trade or per side fee for reporting a trade, a separate per trade fee for canceling a trade, a per terminal fee, etc.).¹³ Rather than charging the same fee to all FINRA/NYSE TRF participants irrespective of usage, the fees are designed such that more frequent, higher volume users pay more for access to the FINRA/NYSE TRF, while less frequent, lower volume users pay less.

Proposed Rule 7630B

Proposed Rule 7630B would allow affiliated members to aggregate their activity for purposes of the fee and credit schedule applicable to the FINRA/NYSE TRF. For example, affiliated members that might not qualify by themselves for a certain Market Share percentage under the proposed changes to Rule 7610B may be able to qualify by aggregating their activity.

Under proposed Rule 7630B, a member may request that the FINRA/NYSE TRF aggregate its activity with the activity of its affiliates.¹⁴ Paragraph (c) of the proposed rule defines an “affiliate” of the member as any wholly owned subsidiary, parent or sister (as those

¹³ See, e.g., Rules 7510(a) and 7520 (trade reporting fees and equipment-related charges for the ADF) and Rule 7620A (trade reporting fees for the FINRA/Nasdaq TRF).

¹⁴ The proposed rule will be administered by NYSE, in its capacity as the “Business Member” and operator of the FINRA/NYSE TRF on behalf of FINRA. FINRA’s oversight of this function performed by the Business Member is conducted through an annual assessment and review of TRF operations by an outside independent audit firm.

terms are defined under the rule) of the member that is also a member. Thus, the proposed rule requires that one affiliated member own 100% of the voting interests in the other, or that they both be under the common control of a parent that owns 100% of each.

Under paragraph (a) of proposed Rule 7630B, a member requesting aggregation of affiliate activity will be required to certify the affiliate status of entities whose activity it seeks to aggregate and immediately to provide notice of any event that causes an entity to cease to be an affiliate. A review of information regarding the entities will be conducted, and the member may be requested to provide additional information to verify the affiliate status of an entity. A request will be approved unless it is determined that the member's certification is not accurate.¹⁵

Paragraph (b) of the proposed rule expressly states that for purposes of applying any provision of the Rule 7600B Series that reflects a charge assessed, or credit provided, by the FINRA/NYSE Trade Reporting Facility, references to an entity (including references to a "member," a "participant," or a "Trade Reporting Facility Participant") shall be deemed to include the entity and its affiliates that have been approved for aggregation.

FINRA notes that proposed Rule 7630B is identical to current Rule 7630A relating to the FINRA/Nasdaq TRF, except that the proposed rule does not contain the stated policy with respect to the timing of recognition of aggregation requests that is contained in Rule 7630A(a)(2). For purposes of applying proposed Rule 7630B, if two or more members submit a request for aggregation before the end of the month in which they become affiliated, the request will be recognized as if it had been submitted on the first of the month and the members will be able to aggregate all activity during the entire month.

FINRA has filed the proposed rule change for immediate effectiveness and the effective

¹⁵ In the event of an inaccurate certification, FINRA would investigate whether the member had violated FINRA rules and would take appropriate disciplinary action.

date is July 2, 2012.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,¹⁶ which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes that the proposed transaction credit schedule under Rule 7610B is reasonable and equitable in that it bases the percentage of revenue shared on members' respective contributions to the revenues of the FINRA/NYSE TRF, *i.e.*, market participants that make the most use of the FINRA/NYSE TRF will be eligible for the highest level of revenue sharing with others receiving progressively lower percentages.¹⁷ In addition, FINRA believes that the proposed fees under Rule 7620B are reasonable and equitable in that FINRA members that are more frequent, higher volume users will pay more for access to the FINRA/NYSE TRF, while less frequent, lower volume users will pay less. NYSE, as the Business Member, has determined that the proposed fee and credit structure will help offset the increased cost of operating the FINRA/NYSE TRF, and as such, FINRA believes that the proposed rule change is equitable and reasonable. FINRA further believes that the proposed fee and credit structure is reasonable and equitable in that it will apply only to members that choose to use the FINRA/NYSE TRF. Access to the FINRA/NYSE TRF is offered on fair and non-discriminatory terms, and FINRA members will continue to have the option of using another FINRA facility for purposes of reporting OTC trades in NMS stocks if they determine that the fees and credits of another facility are more favorable. Finally, NYSE

¹⁶ 15 U.S.C. 78o-3(b)(5).

¹⁷ The proposed tiered schedule is comparable in approach to the schedule that currently exists for the FINRA/Nasdaq TRF. See Rule 7610A.

has indicated that it expects that the proposed changes will offset some – but not all – of the cost of operating the FINRA/NYSE TRF, and any costs, including regulatory costs, that are not funded out of market data revenue or trade reporting fees will continue to be funded by NYSE general revenues.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁸ and paragraph (f)(2) of Rule 19b-4 thereunder.¹⁹ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f)(2).

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 No. SR-FINRA-2012-032 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 No. SR-FINRA-2012-032. 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 website (<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 website viewing and printing 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 available publicly. All submissions should refer to File No. SR-FINRA-2012-032 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.²⁰

Kevin M. O'Neill
Deputy Secretary

²⁰ 17 CFR 200.30-3(a)(12).