

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56669; File No. SR-FINRA-2007-017)

October 17, 2007

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rules Relating to Reporting of Odd-Lot Transactions 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 October 10, 2007, 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 II below, which Items have been substantially prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with 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 its trade reporting rules to change the manner in which members are required to report odd-lot transactions⁵ to a FINRA Trade Reporting Facility

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ For purposes of the trade reporting rules, an odd lot is less than a “normal unit of trading,” which is defined as “100 shares of a security unless, with respect to a particular security, NASD determines that a normal unit of trading shall constitute other than 100 shares.” See NASD Rules 4200, 4200A, 4200C, and 4200E.

(“TRF”),⁶ the Alternative Display Facility (“ADF”), and the OTC Reporting Facility (“ORF”) (referred to herein as the “FINRA Facilities”). Specifically, FINRA is proposing to:

(1) eliminate the requirement that members use the special “.RO” trade report modifier to indicate that an odd-lot transaction is reported in accordance with Section 3 of Schedule A to the By-Laws (“Section 3”); and (2) require members to report odd-lot transactions “for publication,” i.e., mark reports of odd lots as “tape eligible,” as applicable.

The text of the proposed rule change is available at FINRA’s principal office, from the Commission’s Public Reference Room, and on FINRA’s Web site (<http://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

On June 12, 2006, the Commission approved SR-NASD-2006-055,⁷ which requires members to report to FINRA in an automated manner all transactions, including odd-lot

⁶ Effective July 30, 2007, FINRA was formed through the consolidation of NASD and the member regulatory functions of NYSE Regulation. Accordingly, the TRFs are now doing business as the FINRA TRFs (i.e., the FINRA/Nasdaq TRF, the FINRA/NSX TRF, and the FINRA/NYSE TRF). The formal name change of each TRF is pending, and once completed FINRA will file a separate proposed rule change to reflect those changes in the Manual.

⁷ See Securities Exchange Act Release No. 53977 (June 12, 2006), 71 FR 34976 (June 16,

transactions, that must be reported to FINRA and that are subject to a regulatory transaction fee pursuant to Section 3.⁸ Today, with the exception of OTC Equity Securities, odd-lot transactions are not reported for purposes of public dissemination;⁹ members report such transactions to FINRA for regulatory purposes only. In this regard, members are required to include a special “.RO” trade report modifier on reports of odd lots to denote that the transaction is reported in accordance with Section 3 (the “.RO Modifier”). FINRA uses the .RO Modifier to identify odd-lot transactions that are required to be included in FINRA’s calculation of its Section 31 obligation to the Commission.

With the implementation of Regulation NMS and a new trade report messaging format, members are required to include the .RO Modifier on trade reports of odd-lot transactions in the same information level (or byte) as other regulatory modifiers. Thus, in certain instances, members may be faced with prioritizing and determining which modifier should be included in the trade report submitted to FINRA. This can lead to confusion, inaccuracies, and inconsistencies in trade reporting which, in turn, can impair FINRA staff’s ability to produce a complete and accurate audit trail and properly assess transaction-related fees.¹⁰ FINRA staff has

2006) (order approving SR-NASD-2006-055).

⁸ Pursuant to Section 31 of the Act, FINRA and the national securities exchanges are required to pay transaction fees and assessments to the Commission that are designed to recover the costs related to the government’s supervision and regulation of the securities markets and securities professionals. FINRA obtains funds to pay its Section 31 fees and assessments from its membership, in accordance with Section 3.

⁹ See NASD Rules 4632(e) (relating to the NASD/Nasdaq TRF), 4632A(i) (relating to the ADF), 4632C(e) (relating to the NASD/NSX TRF), and 4632E(f) (relating to the NASD/NYSE TRF). Pursuant to current NASD Rule 6620, odd-lot transactions in OTC Equity Securities, as defined in NASD Rule 6110, are required to be reported to FINRA for purposes of publication.

¹⁰ FINRA rules require members to use special trade report modifiers to indicate that away-from-the-market sales (the “.RA” modifier) and exercises of OTC options (the “.RX” modifier) are reported in accordance with Section 3. Unlike the .RO Modifier, these

determined that the .RO Modifier can be eliminated because the FINRA Facilities can systematically identify odd-lot transactions from the number of reported shares.

Accordingly, FINRA is proposing to amend its trade reporting rules¹¹ to eliminate the requirement that members use the .RO Modifier on reports of odd-lot transactions. FINRA also is proposing to amend its trade reporting rules¹² to require that members report odd-lot transactions “for publication” or as “tape eligible,” as applicable. Thus, members will report odd-lot transactions in the same manner that they report round-lot transactions today. Although odd-lot transactions will be marked “tape eligible” pursuant to the proposed rule change, the FINRA Facilities will suppress such transactions from public dissemination. Today, with the exception of certain OTC Equity Securities, odd-lot transactions are not publicly disseminated by FINRA or the appropriate Securities Information Processor.¹³

The proposed rule change will ensure consistency in FINRA’s trade reporting rules applicable to over-the-counter transactions in NMS stocks and OTC Equity Securities, promote a more complete and accurate audit trail, and enable FINRA to properly assess applicable transaction-related fees. FINRA notes that the proposed rule change will not impose a new requirement that members report odd-lot transactions, but merely will change the manner in

modifiers do not compete with other trade report modifiers. Accordingly, FINRA is not proposing to eliminate the .RA and .RX modifiers.

¹¹ NASD Rules 6130(g) (relating to the NASD/Nasdaq TRF and ORF), 6130A(c) (relating to the ADF), 6130C(f) (relating to the NASD/NSX TRF), and 6130E(f) (relating to the NASD/NYSE TRF).

¹² NASD Rules 4632(e) (relating to the NASD/Nasdaq TRF), 4632A(i) (relating to the ADF), 4632C(e) (relating to the NASD/NSX TRF), and 4632E(f) (relating to the NASD/NYSE TRF).

¹³ FINRA currently disseminates trade information relating to transactions of fewer than 100 shares in certain high-priced OTC Equity Securities. In some cases, trades in certain high-priced issues are almost exclusively for fewer than 100 shares and therefore, without

which such transactions are reported to the FINRA Facilities.¹⁴

Finally, FINRA also is proposing certain technical, non-substantive changes to NASD Rules 6130A(c), 6130C(f), and 6130E(f) to maintain consistency in the trade reporting rules relating to the FINRA Facilities to the extent practicable.

FINRA is filing the proposed rule change for immediate effectiveness. FINRA will announce the operative date of the proposed rule change on its Web site. In recognition of the systems changes that the proposed rule change will require, the operative date will be at least 90 days after the date of filing.

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 will promote a more complete and accurate audit trail and enable FINRA to properly assess applicable transaction-related fees.

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.

this dissemination policy, trading data for such issues would be effectively unavailable to market participants. The proposed rule change does not amend this dissemination policy.

¹⁴ Members should continue to report the offsetting “riskless” leg of an odd-lot riskless principal transaction as they do today, i.e., by submitting a non-tape (or clearing-only) report, as applicable. See NASD Rules 4632(d)(3)(B) (relating to the NASD/Nasdaq TRF), 4632A(e)(1)(C)(ii) (relating to the ADF), 4632C(d)(3)(B) (relating to the NASD/NSX TRF), 4632E(e)(3)(B) (relating to the NASD/NYSE TRF), and 6620(d)(3)(B) (relating to the ORF).

¹⁵ 15 U.S.C. 78o-3(b)(6).

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

Because the 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 after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁶ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁷ FINRA believes that the filing is appropriately designated as “non-controversial” because the proposed rule change is not imposing a new requirement on members to report odd-lot transactions, but merely is changing the manner in which members must report such transactions to the FINRA Facilities. In accordance with Rule 19b-4(f)(6)(iii),¹⁸ FINRA submitted 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.¹⁹

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 the furtherance of the purposes of the Act.

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ 17 CFR 210.19b-4(f)(6)(iii).

¹⁹ See e-mail dated August 13, 2007 from Lisa C. Horrigan, Associate General Counsel, FINRA to Katherine A. England, Assistant Director, Division of Market Regulation, Commission.

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-2007-017 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-2007-017. 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 available publicly. All submissions should refer to File Number SR-FINRA-2007-017 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁰

Florence E. Harmon
Deputy Secretary

²⁰ 17 CFR 200.30-3(a)(12).