

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56754; File No. SR-NASD-2007-031)

November 6, 2007

Self-Regulatory Organizations; National Association of Securities Dealers, Inc. (n/k/a Financial Industry Regulatory Authority, Inc. (“FINRA”); Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto to Amend NASD Rule 7001E to Increase Percentage of Market Data Revenue Shared with NASD/NYSE TRF Participants

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 24, 2007, 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 III below, which Items have been prepared by NASD. On June 1, 2007, NASD filed Amendment No. 1. On October 29, 2007, FINRA filed Amendment No. 2 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 2 only, from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

FINRA proposes to amend NASD Rule 7001E (Securities Transaction Credit) to increase to 100% the percentage of New York Stock Exchange (“Tape A”), American Stock Exchange (“Tape B”) and Nasdaq Exchange (“Tape C”) revenue shared with FINRA members reporting

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD’s Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority, Inc., or FINRA, in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. See Securities Exchange Act Release No. 56146 (July 26, 2007), 72 FR 42190 (August 1, 2007).

trades to the NASD/NYSE Trade Reporting Facility (“NASD/NYSE TRF”). The text of the proposed rule change is available at FINRA, [www.finra.org](http://www.finra.org), and 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. 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

On February 1, 2007, NASD filed for immediate effectiveness a proposed rule change relating to the establishment of the NASD/NYSE TRF.<sup>4</sup> The NASD/NYSE TRF provides NASD members another mechanism for reporting locked-in transactions in exchange-listed securities effected otherwise than on an exchange.

In connection with the establishment of the NASD/NYSE TRF, NASD and NYSE Market, Inc. (“NYSE”) entered into the Limited Liability Company Agreement of NASD/NYSE Trade Reporting Facility LLC (“NASD/NYSE TRF LLC Agreement”), a copy of which appears in the NASD Manual. Under the NASD/NYSE TRF LLC Agreement, NASD, the “SRO Member,” has sole regulatory responsibility for the NASD/NYSE TRF. NYSE, the “Business

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<sup>4</sup> See Securities Exchange Act Release No. 55325 (February 21, 2007), 72 FR 8820 (February 27, 2007) (SR-NASD-2007-011). The NASD/NYSE TRF commenced operation on April 18, 2007.

Member,” is primarily responsible for the management of the NASD/NYSE TRF’s business affairs to the extent those activities are not inconsistent with the regulatory and oversight functions of FINRA. Additionally, 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 NASD/NYSE TRF.

On March 21, 2007, NASD filed a proposed rule change for immediate effectiveness to adopt a new NASD Rule 7000E Series relating to fees and credits applicable to the NASD/NYSE TRF.<sup>5</sup> Pursuant to NASD Rule 7001E, FINRA members reporting trades in Tape A, Tape B and Tape C securities to the NASD/NYSE TRF currently receive a 50% pro rata credit on gross market data revenue earned by the NASD/NYSE TRF. “Gross revenue” is the revenue received by the NASD/NYSE TRF from the three tape associations after the tape associations deduct allocated support costs and unincorporated business costs.

#### Proposal to Increase Securities Transaction Credit

FINRA is proposing to amend Rule 7001E to increase from 50% to 100% the percentage of market data revenue shared with members under the securities transaction credit program. Thus, FINRA members reporting trades in Tape A, Tape B and Tape C stocks to the NASD/NYSE TRF will receive a 100% pro rata credit on gross market data revenue earned by the NASD/NYSE TRF.

The NYSE, as the Business Member under the NASD/NYSE TRF LLC Agreement, has determined that the proposed increase in the percentage of market data revenue shared with NASD/NYSE TRF participants is necessary for competitive reasons. The NYSE believes that, as a new and late entrant to the OTC trade reporting arena, competitive pricing can differentiate

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<sup>5</sup> See Securities Exchange Act Release No. 55526 (March 26, 2007), 72 FR 15739 (April 2, 2007) (SR-NASD-2007-025).

its product offering. Additionally, the proposed increase would be consistent with the position of the NYSE that the economic benefits of off-exchange trades should not accrue to exchanges.<sup>6</sup>

The NYSE has indicated that because there are currently no fees for reporting trades to the NASD/NYSE TRF, the NYSE will fund regulatory costs associated with the NASD/NYSE TRF from NYSE general revenues.

FINRA is proposing that the effective date of the proposed rule change shall be retroactive to April 18, 2007, the date on which the NASD/NYSE TRF commenced operation.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>7</sup> in general, and with Section 15A(b)(5) of the Act,<sup>8</sup> in particular, 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 rule change is a reasonable and equitable credit structure in that it will be applied uniformly among members that participate in the NASD/NYSE TRF and that the NYSE has indicated that all regulatory costs owed by the NYSE as the Business Member related to the NASD/NYSE TRF will be funded by NYSE general revenues.

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<sup>6</sup> See letter dated April 27, 2006 from Mr. John A. Thain, Chief Executive Officer, NYSE Group, to Chairman Cox, SEC. In that letter, the NYSE also stated that “Since dealer-internalized trades do not contribute directly to price discovery, the ideal resolution would be to remove such trades from the revenue sharing formula.”

<sup>7</sup> 15 U.S.C. 78o-3.

<sup>8</sup> 15 U.S.C. 78o-3(b)(5).

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:

- 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](mailto:rule-comments@sec.gov). Please include File No. SR-NASD-2007-031 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASD-2007-031. 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 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-NASD-2007-031 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).