

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57020; File No. SR-FINRA-2007-012)

December 20, 2007

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 thereto to Amend Trade Reporting Rules to Require Related Market Center Indicator on Certain Non-Tape Reports Submitted 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 September 12, 2007, the Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a 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 substantially prepared by FINRA.³ On December 18, 2007, FINRA filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change as modified by Amendment No. 1 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 require that on any non-tape report (a non-tape, non-clearing report or a clearing-only report) submitted to a FINRA Facility (i.e., the Alternative Display Facility (“ADF”), a Trade Reporting Facility (“TRF”)⁴ or the OTC

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 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 the 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).

⁴ Effective July 30, 2007, FINRA was formed through the consolidation of NASD and the member regulatory functions of NYSE Regulation, Inc. Accordingly, the TRFs are now

Reporting Facility (“ORF”)) associated with a previously executed trade that was not reported to that same FINRA Facility, members identify the facility or market where the associated trade was reported. The text of the proposed rule change is available at FINRA, the Commission’s Public Reference Room, and <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

Background

Certain transactions can be trade reported in related tape (i.e., the transaction is reported to the tape for publication) and non-tape (i.e., the transaction is not reported to the tape for publication but is reported for clearing or regulatory purposes) reports. Non-tape reports can be (1) “non-tape, non-clearing,” i.e. the transaction is not reported to the tape and is submitted to FINRA for regulatory – and not clearing – purposes, or (2) “clearing-only,” i.e., the transaction is not reported to the tape and is submitted to FINRA for clearing (and perhaps also regulatory)

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.

purposes.

A riskless principal transaction⁵ can be submitted to FINRA as a single trade report properly marked as riskless principal, or as two separate reports: (1) a tape report to reflect the initial leg of the transaction and (2) a non-tape report to reflect the offsetting, “riskless” leg of the transaction. For example, where the initial leg of a riskless principal transaction is executed on and reported through an exchange (often referred to as the “street leg” or “street side”), a tape report is not submitted to FINRA to reflect the initial leg; however, members are permitted, but not required, to submit a non-tape report to FINRA for the offsetting, “riskless” leg of the transaction. Similarly, agency transactions where one member acts as agent on behalf of another member, which transactions are the functional equivalent of riskless principal transactions, can also be reported in related tape and non-tape reports. Thus, for example, similar to the riskless principal reporting structure, where Member A, as agent for Member B, executes a trade on an exchange (and that trade is reported to the tape through the exchange), Member A may submit a non-tape report to FINRA to reflect the offsetting portion of the agency trade between Member A and Member B.⁶ Currently, a non-tape report provides no specific information pertaining to a related tape report and as such, it is difficult for FINRA to determine where the associated trade was reported, especially if that trade was reported to an exchange or another FINRA Facility.

⁵ For purposes of over-the-counter trade reporting requirements applicable to equity securities, a “riskless principal” transaction is a transaction in which a member, after having received an order to buy (sell) a security, purchases (sells) the security as principal (the initial leg) and satisfies the original order by selling (buying) as principal at the same price (the offsetting, “riskless” leg).

⁶ See FINRA Regulatory Notice 07-38 (August 2007).

Proposed Amendments to NASD Rules 6130, 6130A, 6130C and 6130E

FINRA is proposing to amend NASD Rules 6130 (relating to the NASD/Nasdaq TRF and ORF), 6130A (relating to the ADF), 6130C (relating to the NASD/NSX TRF) and 6130E (relating to the NASD/NYSE TRF) to require that on any non-tape report (either a non-tape, non-clearing report or a clearing-only report) submitted to a FINRA Facility associated with a previously executed trade that was not reported to that same FINRA Facility, members must identify the facility or market where the associated trade was reported. The proposed rule change also requires that members retain and produce to FINRA, upon request, documentation relating to the associated trade (e.g., a confirmation from the exchange identifying the “street side” of a riskless principal transaction).

For example, pursuant to the proposed rule change, if the initial leg of a riskless principal (or agency) transaction is executed on and reported through the Nasdaq Exchange, a member submitting a non-tape report for the offsetting leg of the transaction to the NASD/Nasdaq TRF would be required to use a special indicator on that report to designate that the initial leg was reported through the Nasdaq Exchange. By way of further example, if the initial leg is executed otherwise than on an exchange and reported to the NASD/NYSE TRF, a member submitting a non-tape report for the offsetting leg to the NASD/Nasdaq TRF would be required to use a special indicator on that report to designate that the initial leg was reported to the NASD/NYSE TRF. Finally, if the initial leg is executed on and reported through a foreign exchange,⁷ a member submitting a non-tape report for the offsetting leg to the ORF would be required to use a special indicator on that report to designate that the initial leg was reported through a foreign exchange.

⁷ This leg would not be reported to FINRA pursuant to NASD Rule 6620(g).

In addition, FINRA is proposing to clarify and consolidate into a single paragraph in NASD Rules 6130, 6130A, 6130C and 6130E the rules relating to the submission of non-tape reports associated with previously executed trades. Pursuant to current Rules 6130(i), 6130A(d), 6130C(h) and 6130E(h), members are prohibited from submitting to a FINRA Facility any non-tape report, including but not limited to reports of step-outs and reversals, associated with a previously executed trade that was not reported to that FINRA Facility, except where such report reflects the offsetting, “riskless” portion of a riskless principal transaction.⁸ This exception also applies to agency transactions where a FINRA member is acting as agent on behalf of another FINRA member.⁹ The requirement proposed herein, i.e., that a member identify on a non-tape report the market or facility where an associated trade was reported, would apply where a transaction falls within this exception for riskless principal or agency transactions and the related tape and non-tape reports are submitted to different FINRA Facilities or the non-tape report is associated with a trade that was reported to the tape through an exchange. Thus, for ease of reference, FINRA is proposing to include the proposed requirement that members identify the facility or market where the associated trade was reported in the same paragraph with the prohibition on the submission of certain non-tape reports to FINRA in current NASD Rules 6130(i), 6130A(d), 6130C(h) and 6130E(h) and to clarify that the proposed requirement applies where a non-tape report is permitted pursuant to current Rules 6130(i), 6130A(d), 6130C(h) and 6130E(h).

FINRA believes that the proposed rule change will promote a more complete and

⁸ See Securities Exchange Act Release No. 55962 (June 26, 2007), 72 FR 36536 (July 3, 2007) (notice of filing and immediate effectiveness of SR-NASD-2007-040). SR-NASD-2007-040 became operative on November 5, 2007. See also FINRA Regulatory Notice 07-38 (August 2007).

⁹ See FINRA Regulatory Notice 07-38 (August 2007).

accurate audit trail. Additionally, the proposed rule change will help ensure that members are not using non-tape reports to circumvent FINRA or Commission rules (e.g., trade-through rules).

FINRA will announce the operative date of the proposed rule change on its Web site. In recognition of the technological and systems changes that the proposed rule change will require, the operative date will be at least 90 days following 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,¹⁰ 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.

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 FINRA consents, the Commission will:

¹⁰ 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-2007-012 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-2007-012. 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 am and 3:00 pm. 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-2007-012 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.¹¹

Florence E. Harmon
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).