SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-83559; File No. SR-FINRA-2018-013)

June 29, 2018

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, to Establish a Second Trade Reporting Facility

I. Introduction

On April 19, 2018, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to establish a second Trade Reporting Facility ("TRF") to be operated in conjunction with Nasdaq, Inc. ("Nasdaq"). The proposed rule change was published for comment in the Federal Register on April 26, 2018.[3] The Commission received no comment letters on the proposal. On June 21, 2018, FINRA filed Amendment No. 1.[4] This order approves the proposed rule change, as modified by Amendment No. 1.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 See Securities Exchange Act Release No. 83082 (April 20, 2018), 83 FR 18379 ("Notice"). See also, Securities Exchange Act Release No. 83398 (June 8, 2018), 83 FR 27807 (June 14, 2018) extending the time for the Commission to act on the filing.

4 In Amendment No. 1, FINRA states that, if the Commission approves the proposed rule change, FINRA anticipates that the FINRA/Nasdaq TRF Chicago will commence operation in September 2018, but in no event later than December 31, 2018. Amendment No. 1 is available at: https://www.sec.gov/comments/sr-finra-2018-013/finra2018013-3918682-166985.pdf. Because Amendment No. 1 does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 1 is not subject to notice and comment.

II. Description of the Proposal

Background

FINRA currently has three facilities that allow its members to report over-the-counter ("OTC") trades in NMS stocks:[5] the FINRA/Nasdaq TRF, the FINRA/NYSE TRF, and the Alternative Display Facility ("ADF") (collectively, the "FINRA Facilities"). For each TRF, FINRA is the SRO Member and, as such, it has sole regulatory responsibility for the TRFs, including: real-time monitoring and T+1 surveillance, development and enforcement of trade reporting rules, and submission of proposed rule changes to the Commission. Nasdaq is the "Business Member" of the FINRA/Nasdaq TRF.[6] A Business Member is primarily responsible for the management of the business affairs of its TRF.[7] Among other things, the Business Member establishes pricing, is obligated to pay the cost of regulation and is entitled to the profits and responsible for the losses derived from the operation of its TRF.[8]

In January 2016, FINRA published a Trade Reporting Notice ("Trade Reporting Notice") that provided guidance on the reporting obligations of member firms regarding OTC equity trades in the event of a systems issue during the trading day that prevents firms from reporting OTC trades in NMS stocks in accordance with FINRA rules.[9] As set forth in the Trade Reporting Notice, a firm that routinely reports its OTC trades in NMS stocks to one FINRA Facility ("primary facility") must establish and maintain connectivity and report to a second

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5 See Rule 600(b) of Regulation NMS under the Act.

6 NYSE is the Business Member of the FINRA/NYSE TRF.

7 See Notice at 18381.

8 See id.

9 See Trade Reporting Notice, January 20, 2016 (OTC Equity Trading and Reporting in the Event of Systems Issues).

FINRA Facility ("secondary facility") if the firm intends to continue to support OTC trading as an executing broker while its primary facility is experiencing a widespread systems issue.[10]

Proposal

FINRA proposed to establish a second FINRA/Nasdaq TRF ("FINRA/Nasdaq TRF Chicago"), to provide FINRA members an additional facility to which to report trades in compliance with FINRA rules and the Trade Reporting Notice. The FINRA/Nasdaq TRF Chicago would be governed by the rules applicable to the existing FINRA/Nasdaq Trade Reporting Facility ("FINRA/Nasdaq TRF Carteret").[11] A primary user of the FINRA/Nasdaq TRF Carteret could report on a back-up basis to the FINRA/Nasdaq TRF Chicago pursuant to the same rules, pricing, features and performance to which the firm is accustomed as a user of the FINRA/Nasdaq TRF Carteret – and vice versa.[12] FINRA/Nasdaq TRF Chicago trade reports would be disseminated with a modifier indicating the source of the transactions that would distinguish them from transactions executed on an exchange or reported to another FINRA Facility, including the FINRA/Nasdaq TRF Carteret.

The proposed rule change would establish the FINRA/Nasdaq TRF Chicago on the same terms as the FINRA/Nasdaq TRF Carteret. The FINRA/Nasdaq TRF Chicago would be built

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[10] As discussed in the Trade Reporting Notice, if a firm chooses not to have connectivity to a secondary facility, it should cease executing OTC trades altogether when its primary trade reporting facility is experiencing a widespread systems issue. In that instance, the firm could route orders for execution to an exchange or another FINRA member (i.e., a member with connectivity and the ability to report trades to a FINRA Facility that is operational).

[11] See Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (order approving SR-NASD-2005-087); and Securities Exchange Act Release No. 54798 (November 21, 2006), 71 FR 69156 (November 29, 2006) (order approving SR-NASD-2006-104).

[12] A FINRA member also has the option to report some trades, on a primary basis, to the FINRA/Nasdaq TRF Chicago, and some trades, on a primary basis, to the FINRA/Nasdaq TRF Carteret.

with the same technology, provide the same features and performance,[13] offer the same pricing, and be governed by the same substantive rules, policies, and procedures. A single set of application materials and clearing arrangements will provide for access to both TRFs. Moreover, Nasdaq, as the Business Member, has advised FINRA that these two TRFs will evolve in tandem and remain the same going forward (for example, because the same fee and credit schedule under the Rule 7600A Series will apply to both TRFs, any pricing changes would apply to both TRFs).[14] The proposed rule change would allow firms to aggregate the volume of trades that they report to the two TRFs, which will enable firms to continue to qualify for any volume-based pricing that they would otherwise qualify for if they limited their trade reporting to one of those facilities. Finally, FINRA would amend Rules 6300A, 7200A, and 7600A Series, which govern the FINRA/Nasdaq TRF Carteret, to accommodate the establishment of the FINRA/Nasdaq TRF Chicago.[15]

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13 Users of the two FINRA/Nasdaq TRFs may experience latency differences due to the different locations of the TRFs.

14 According to Nasdaq, the FINRA/Nasdaq TRF Chicago will include several new components to provide performance improvements and operational efficiencies that Nasdaq intends to incorporate into the FINRA/Nasdaq TRF Carteret shortly after the launch of FINRA/Nasdaq TRF Chicago. Nasdaq will provide participants with notice prior to re-platforming the FINRA/Nasdaq TRF Carteret. After Nasdaq completes this re-platforming, Nasdaq generally intends to perform updates, upgrades, fixes or other modifications to the two FINRA/Nasdaq TRFs in tandem. However, Nasdaq notes that there may be instances in which it will be necessary for Nasdaq to act in sequence. During such instances, there may be disparities between the two TRFs with respect to function or performance. Nasdaq expects that any disparity in function or performance between the two TRFs that arises during sequential changes will be transitory. Nasdaq will provide participants with notice if it anticipates more than a de minimis transition period.

15 See Notice at 18381-82.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[16] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[17] 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.

The Commission believes that the proposal to establish the FINRA/Nasdaq TRF Chicago is consistent with the purposes of the Act and with FINRA's responsibility to enforce compliance by its members with its rules and with the Act. FINRA states that geographic dispersion of these TRFs would reduce the risk of a regional outage affecting them both simultaneously. By providing members with an alternative FINRA facility in a different location than the existing FINRA/Nasdaq TRF with which to satisfy their trade reporting obligations, the Commission believes that the proposed rule change should enhance the resiliency and promote the integrity of the OTC market. Accordingly, for the reasons discussed above, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act.

IV. Conclusion

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act[18] that the

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16 In approving this proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

17 15 U.S.C. 78o-3(b)(6).

18 15 U.S.C. 78s(b)(2).

proposed rule change (SR-FINRA-2018-013), as modified by Amendment No. 1, be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Eduardo A. Aleman
Assistant Secretary

[19] 17 CFR 200.30-3(a)(12).