

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58331; File No. SR-FINRA-2008-016)

August 8, 2008

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change to Align the Reporting Requirements and Dissemination Protocols for OTC Equity Transactions Involving Foreign Securities with All Other OTC Equity Securities

I. Introduction

On April 25, 2008, 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”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)¹ and Rule 19b-4 thereunder,² a proposal: (1) to amend NASD Rule 6620 to align the reporting requirements for over-the-counter (“OTC”) equity transactions involving foreign securities with the reporting requirements for other OTC equity transactions; and (2) to align the dissemination protocols for all last sale reports of OTC equity transactions. On June 12, 2008, FINRA submitted Amendment No. 1 to the proposed rule change. The proposal was published for comment in the Federal Register on June 26, 2008.³ The Commission received five comments regarding the proposal.⁴ This order approves the proposed rule change, as modified by Amendment No. 1.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 57986 (June 18, 2008), 73 FR 36363 (“Notice”).

⁴ See letters from Verdun Edgton, Vice President and Corporate Governance Officer, The Bank of New York Mellon, to Secretary, Commission, dated July 17, 2008 (“BNYMellon Letter”); Sam Guidetti, Director of Compliance, Hill, Thompson, Magid & Co., to Florence E. Harmon, Acting Secretary, Commission, dated July 15, 2008 (“Hill Thompson Letter”); Peter Coolidge, Portfolio Manager, Deltec Special Situations Partners, L.P., to Secretary, Commission, dated July 9, 2008 (“Deltec Letter”); R. Cromwell Coulson, Chief Executive Officer, Pink OTC Markets, to Secretary,

II. Description of the Proposed Rule Change

Currently, NASD rules require that transactions in OTC Equity Securities (which term encompasses domestic equity securities, American Depositary Receipts (“ADRs”), and Canadian issues) that are executed between 8:00 a.m. and 8:00 p.m. Eastern Time be reported to the OTC Reporting Facility within 90 seconds of execution.⁵ Thus, transactions in all ADRs and Canadian issues, including those that are not registered with the Commission and thus are not subject to the Commission’s reporting requirements, are subject to 90-second reporting under NASD Rule 6620. Transactions in all other foreign equity securities are excluded from the 90-second reporting requirement and instead must be reported by 1:30 p.m. Eastern Time the day after the transaction is executed.⁶

Last sale information for transactions in domestic OTC Equity Securities reported pursuant to Rule 6620 is disseminated on a real-time basis, irrespective of whether the security is registered with the Commission. However, there is no uniformity regarding the dissemination of last sale information for transactions in ADRs and foreign securities. Last sale reports of ADRs and Canadian issues that are quoted on the OTC Bulletin Board (“OTCBB”), which has an eligibility requirement that OTCBB issuers must be reporting issuers,⁷ are disseminated on a

Commission, dated July 7, 2008 (“Pink OTC Markets Letter”); and Robert Arancio, President, and Kimberly Unger, Executive Director, The Security Traders Association of New York, to Secretary, Commission, dated June 27, 2008 (“STANY Letter”).

⁵ See NASD Rule 6620(a). For purposes of the NASD Rule 6600 Series, “OTC Equity Securities” means equity securities for which real-time trade reporting is not otherwise required. See NASD Rule 6600. NASD Rule 6610(d) further defines “OTC Equity Security” as “any non-exchange-listed security and certain exchange-listed securities that do not otherwise qualify for real-time trade reporting.”

⁶ See NASD Rule 6620(a)(3)(C)(iii). Although not required, a member may choose to report transactions in foreign securities within 90 seconds of execution. See NASD Rule 6620 n.1.

⁷ See NASD Rule 6530(b)(1).

real-time basis. However, only summary information is disseminated at the end of each trading day for OTC ADRs and Canadian issues that are not quoted on the OTCBB, whether or not they are registered with the Commission. Transactions in foreign securities, other than Canadian issues and ADRs, that are quoted on the OTCBB are disseminated on a real-time basis if they are received on the day of the trade. However, as noted above, there is no current requirement to report these trades to FINRA within 90 seconds of execution, or even on the trade date. If an OTC transaction in a foreign security is not reported on the trade date, last sale information for that transaction is not disseminated.

FINRA now proposes: (1) to require all transactions in OTC Equity Securities to be reported within 90 seconds of execution; and (2) to disseminate last sale information regarding those transactions on a real-time basis. Thus, the proposed rule change would eliminate the distinctions between domestic, foreign, ADR, and Canadian securities and would require prompt reporting and real-time dissemination for all OTC transactions.⁸ FINRA believes that the proposal would substantially improve the transparency of the OTC market.

FINRA represented that it would announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval of this proposed rule change. The effective date would be 30 days following publication of that Regulatory Notice.

⁸ The single exception would be for transactions in foreign equity securities executed over-the-counter in a foreign country and reported to the regulator of securities markets for that country. See NASD Rule 6620(g)(2)(B). Transactions in foreign equity securities executed on and reported to a foreign securities exchange also are excepted from the FINRA reporting requirements. See NASD Rule 6620(g)(2)(A).

III. Summary of Comments

The Commission received letters from five commenters.⁹ All of the commenters supported the proposal. The commenters stated that the proposal would lead to greater transparency, better price discovery, and/or better trading practices, and should therefore foster a strong and competitive U.S. OTC market in foreign securities.¹⁰ The commenters also unanimously stated that the proposal would provide industry participants with the ability to monitor the quality of executions that they receive in foreign securities, which they believe would increase competition among broker-dealers and enhance best execution practices in the industry.¹¹ Two commenters noted that the proposal would help prevent improper trading practices, such as front-running.¹²

IV. Discussion and Findings

After careful consideration of the proposal and the comments submitted, 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.¹³ In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,¹⁴ 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.

⁹ See supra note 4.

¹⁰ See BNYMellon Letter; Hill Thompson Letter; Deltec Letter; Pink OTC Markets Letter; STANY Letter.

¹¹ See id.

¹² See Pink OTC Markets Letter; STANY Letter.

¹³ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁴ 15 U.S.C. 78o-3(b)(6).

FINRA stated in its proposal that it believed that prompt last sale reporting and real-time dissemination of trade reports for all OTC transactions in ADRs, foreign securities, and Canadian issues would enhance the amount of market information available to investors and better enable investors to monitor the executions they receive in these securities. The Commission notes that all the commenters agreed with this statement.¹⁵

In its request for comments, the Commission specifically requested comment regarding whether the proposed rule change would significantly change the factors considered by foreign private issuers in deciding whether to list on a U.S. securities exchange and register with the Commission, and whether the proposed rule change would serve to promote the U.S. over-the-counter market for unregistered foreign securities.¹⁶ In response to the first inquiry, one commenter stated that it did not believe that the proposal would “in any way serve to encourage foreign firms to trade their issues in the United States without registration.”¹⁷ Regarding the second inquiry, the commenters noted the benefits of greater transparency that would allow U.S. broker-dealers to better compete with foreign markets, and U.S. investors to better assess the executions that they receive, when effecting OTC transactions in foreign securities.¹⁸

The Commission believes that it is appropriate to eliminate the distinctions in trade reporting and dissemination that currently exist for OTC transactions in domestic, foreign, ADR, and Canadian securities. The Commission believes 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.

¹⁵ See supra notes 10 and 11 and accompanying text.

¹⁶ See Notice, supra note 3.

¹⁷ STANY Letter, supra note 4.

¹⁸ See supra notes 10 and 11 and accompanying text.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁹ that the proposed rule change (File No. SR-FINRA-2008-016), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Florence E. Harmon
Acting Secretary

¹⁹ 15 U.S.C. 78s(b)(2).

²⁰ 17 CFR 200.30-3(a)(12).