

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-60168; File No. SR-FINRA-2009-043)

June 24, 2009

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Application of Transaction-Related Charges for Trade Reporting to the OTC Reporting Facility

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 17, 2009, Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below [sic], which Items have been prepared by FINRA. FINRA has designated the proposed rule change as “establishing or changing a due, fee or other charge” under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon receipt of this filing by 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 FINRA Rule 7710 to clarify the application of transaction-related charges for trade reporting to the OTC Reporting Facility (“ORF”).

---

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA and at 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 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

The FINRA Rule 7700 Series, among other things, sets forth the pricing schedule for the ORF, the OTC Bulletin Board, and the Trade Reporting and Compliance Engine Services. On March 1, 2007, FINRA filed a proposed rule change (SR-NASD-2007-018) for immediate effectiveness that deleted certain fee provisions from the FINRA Rule 7700 Series<sup>5</sup> and amended certain other provisions.<sup>6</sup> In that filing, NASD Rule 7010(g) was renumbered as NASD Rule 7010, renamed, and amended to apply only to the ORF.<sup>7</sup> The amendments became operative on

---

<sup>5</sup> At the time of the rule filing, the FINRA Rule 7700 Series was the NASD Rule 7000 Series. The NASD Rule 7000 Series was renumbered as the FINRA Rule 7700 Series in 2008. See Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008); see also FINRA Regulatory Notice 08-57 (October 2008).

<sup>6</sup> See Securities Exchange Act Release No. 55538 (March 27, 2007), 72 FR 15924 (April 3, 2007) (Notice of Filing and Immediate Effectiveness of SR-NASD-2007-018).

<sup>7</sup> NASD Rule 7010 was later renumbered as FINRA Rule 7710. See Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008).

March 5, 2007.<sup>8</sup> As FINRA stated in the filing, the amendments made to the rule language were not intended to modify any of the charges relating to the ORF.

Although there was no intent to modify any charges in connection with reporting transactions to the ORF, the rule language, as amended, omits some securities from the rule because of the definition of “OTC Equity Security” in FINRA Rule 6420. The previous rule, NASD Rule 7010(g), included a catch-all provision that applied a charge of \$0.029/side to the “reporting of all other transactions not subject to comparison.” This language included, for example, PORTAL equity securities, which are reported to the ORF pursuant to the PORTAL rules in the FINRA Rule 6630 Series. The term “OTC Equity Security,” however, specifically excludes PORTAL securities and restricted securities from the definition.<sup>9</sup> Thus, by using the defined term “OTC Equity Security,” the rule was inadvertently amended to exclude PORTAL equity securities from the scope of the rule.

The proposed rule change would delete the reference to “OTC Equity Security” in FINRA Rule 7710 and clarify that the charge applies to the reporting of transactions in any security, not just OTC Equity Securities, to the ORF that are not subject to comparison through the ORF.

FINRA has filed the proposed rule change for immediate effectiveness. The effective date and the implementation date will be the date of filing, June 17, 2009.

## 2. Statutory Basis

---

<sup>8</sup> See Securities Exchange Act Release No. 55538 (March 27, 2007), 72 FR 15924 (April 3, 2007) (Notice of Filing and Immediate Effectiveness of SR-NASD-2007-018).

<sup>9</sup> See FINRA Rule 6420(c), (d).

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,<sup>10</sup> 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 clarifies the charges assessed with respect to transactions reported to the ORF and correctly reflects FINRA's intent when amending the rule in SR-NASD-2007-018.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and paragraph (f)(2) of Rule 19b-4 thereunder.<sup>12</sup> 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 furtherance of the purposes of the Act.

IV. Solicitation of Comments

---

<sup>10</sup> 15 U.S.C. 78o-3(b)(5).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

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 Number SR-FINRA-2009-043 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2009-043. 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 publicly available. All submissions should refer to File Number SR-FINRA-2009-043 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.<sup>13</sup>

Florence E. Harmon  
Deputy Secretary

---

<sup>13</sup> 17 CFR 200.30-3(a)(12).