

(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 thirty-five 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 ninety 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. Please include File Number SR-NASD-2007-035 in 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-NASD-2007-035. 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 Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal office of the NASD and on NASD's Web site, <http://www.finra.org/RulesRegulation/RuleFilings/index.htm>. 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-2007-035 and should be submitted on or before November 7, 2007.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁸

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56644; File No. SR-FINRA-2007-016]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Reflect the Closing of the NASD/BSE Trade Reporting Facility

October 11, 2007.

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 October 9, 2007, the Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a 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 and II below, which Items have been prepared substantially by FINRA. FINRA has submitted the proposed rule change under Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective

upon filing with the Commission.⁵ 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 proposes to delete in their entirety the NASD Rule 4000D, 6000D, and 7000D Series and the Limited Liability Company Agreement of The NASD/BSE Trade Reporting Facility LLC (the "NASD/BSE TRF LLC Agreement"), in light of the recent closing of the NASD/BSE Trade Reporting Facility (the "NASD/BSE TRF").⁶

The text of the proposed rule change is available at <http://www.finra.org>, at the principal offices 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 NASD/BSE TRF was approved by the Commission⁷ and commenced operation in February 2007 to provide members with a mechanism for reporting locked-in trades in NMS stocks, as defined in Rule 600(b)(47) of Regulation NMS under the Act,⁸ effected otherwise than on an exchange. The Boston Stock Exchange, Inc. ("BSE"), the "Business Member" under the NASD/BSE TRF LLC Agreement,

⁵ FINRA has asked the Commission to waive the 30-day operative delay provided in Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

⁶ Effective July 30, 2007, FINRA was formed through the consolidation of NASD and the member regulatory functions of NYSE Regulation, Inc. Accordingly, from that date until the date it closed on September 21, 2007, the NASD/BSE TRF was doing business as the FINRA/BSE TRF.

⁷ See Securities Exchange Act Release No. 54931 (December 13, 2006), 71 FR 76409 (December 20, 2006) (order approving File No. SR-NASD-2006-115).

⁸ 17 CFR 242.600(b)(47).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

determined to close the NASD/BSE TRF for business reasons. Accordingly, as of the close of business on September 21, 2007, the NASD/BSE TRF ceased accepting trade reports.⁹

FINRA members were given prior notice of the closing and were further notified that any members using the NASD/BSE TRF to report trades were required to find an alternative mechanism to satisfy their trade reporting obligations. Prior to September 21, 2007, FINRA and BSE staff worked to ensure that FINRA members that had been reporting trades to the NASD/BSE TRF were transitioned to another FINRA facility. FINRA represents that, notwithstanding the closing of the NASD/BSE TRF, FINRA is able to fulfill all of its regulatory obligations with respect to over-the-counter trade reporting through its other facilities, *i.e.*, the Alternative Display Facility, the NASD/Nasdaq Trade Reporting Facility, the NASD/NSX Trade Reporting Facility, and the NASD/NYSE Trade Reporting Facility.

Accordingly, FINRA proposes to delete the NASD Rule 4000D and 6000D Series relating to trade reporting to the NASD/BSE TRF and the NASD Rule 7000D Series relating to fees and credits for use of the NASD/BSE TRF. In addition, FINRA proposes to delete the NASD/BSE TRF LLC Agreement, a copy of which is included in the Manual. The proposed rule change will ensure that FINRA's rules accurately reflect only the FINRA facilities that are available to members for trade reporting.¹⁰

FINRA has filed the proposed rule change for immediate effectiveness and requested a waiver of the 30-day operative delay. FINRA proposes that the proposed rule change be operative on the date of filing.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act,¹¹ 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 by deleting rules that apply to a FINRA facility that is no longer in operation, the proposed rule change will prevent potential member confusion and trade reporting errors and violations.

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

FINRA has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act¹² and subparagraph (f)(6) of Rule 19b-4 thereunder.¹³ Because FINRA has designated the foregoing proposed rule change as one that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder. As required under Rule 19b-4(f)(6)(iii), FINRA provided the Commission with written notice of its intention to file the proposed rule change at least five business days prior to filing the proposal with the Commission or such shorter period as designated by the Commission.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has asked the Commission to waive the 30-day operative delay to expedite the deletion of rules that applied to the NASD/BSE TRF, a FINRA facility that is

no longer in operation, thereby preventing potential member confusion and trade reporting errors and violations.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal will delete rules that applied to the NASD/BSE TRF, a FINRA facility that ceased operations on September 21, 2007.¹⁴ Accordingly, the Commission believes that the proposal will ensure that FINRA's rules accurately reflect the FINRA trade reporting facilities that are in operation currently and available to accept trade reports. For these reasons, the Commission designates the proposal to be operative on filing with the Commission.

At any time within 60 days of the filing of such 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

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-2007-016 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-FINRA-2007-016. 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/>

¹⁴ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁹ Although the NASD/BSE TRF is no longer operating, pursuant to the termination provisions in the NASD/BSE TRF LLC Agreement, the NASD/BSE Trade Reporting Facility LLC will continue its corporate existence until October 30, 2007.

¹⁰ On September 12, 2007, FINRA filed a proposed rule change, SR-FINRA-2007-012, proposing certain changes to its trade reporting rules, including NASD Rule 6130D. See SR-FINRA-2007-012, available at <http://www.finra.org/RulesRegulation/RuleFilings/2007RuleFilings/P036903>. FINRA will file an amendment to SR-FINRA-2007-012 to delete the references to the NASD/BSE TRF and the proposed changes to NASD Rule 6130D contained in that filing.

¹¹ 15 U.S.C. 78o-3(b)(6).

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6).

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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the 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-2007-016 and should be submitted on or before November 7, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E7-20406 Filed 10-16-07; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56646; File No. SR-ISE-2007-96]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Payment for Order Flow Fees

October 11, 2007.

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 October 9, 2007, the International Securities Exchange, LLC ("ISE" or "Exchange") 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 the Exchange. ISE has designated this proposal as one establishing or changing

a due, fee, or other charge imposed by ISE under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon filing with 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

The ISE is proposing to amend its payment for order flow program. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *www.iseoptions.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange 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. The ISE has substantially 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 Exchange currently has a payment-for-order-flow ("PFOF") program that helps its market makers establish PFOF arrangements with an EAM ("Electronic Access Member") in exchange for that EAM preferencing some or all of its order flow to that market maker. This program is funded through a fee paid by Exchange market makers for each customer contract they execute, and is administered by both Primary Market Makers ("PMM")⁵ and Competitive Market Makers ("CMM"),⁶ depending on who the order is preferenced to. Further, the maximum amount of PFOF fees currently collected by the exchange for PMMs and CMMs to administer is \$450,000 and \$50,000, respectively. When the pool balance exceeds these threshold levels, ISE

rebates funds proportionately to those who have paid the PFOF fees. The Exchange states that it closely monitors the levels of the cap to ensure that there are adequate funds available to market makers to be competitive. In order to allow the Exchange's market makers to better compete in attracting order flow to the Exchange, it proposes to adopt a uniform PFOF cap of \$100,000 for both its PMM- and CMM-administered pools. The Exchange believes that the PMM ceiling of \$450,000 is a considerable amount of money, and thus seeks to reduce that amount to \$100,000. With regard to the CMM ceiling, the Exchange believes that \$50,000 is too little an amount for these market makers to better compete in attracting order flow and thus proposes to raise that ceiling to \$100,000.

Additionally, the Exchange proposes to amend its fee schedule to reflect that PFOF funds are rebated on a monthly basis, instead of on a quarterly basis.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁷ in general, and furthers the objectives of Section 6(b)(4) of the Act⁸ in particular, because it is an equitable allocation of reasonable dues, fees, and other charges among exchange members and other persons using exchange facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose 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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act⁹ and Rule 19b-4(f)(2)¹⁰ thereunder, because it establishes or changes a due,

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ See Securities Exchange Act Release No. 43833 (January 10, 2001), 66 FR 7822 (January 25, 2001) (SR-ISE-00-10).

⁶ See Securities Exchange Act Release No. 53127 (January 13, 2006), 71 FR 3582 (January 23, 2006) (SR-ISE-2005-57).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁰ 17 CFR 240.19b-4(f)(2).

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.