

review.<sup>12</sup> Commenters stated customer funds could be held in these accounts and would not result in the issuance of a contract until principal review has been completed.<sup>13</sup> Some commenters also stated that customer funds could be refunded in the event a contract is not issued.<sup>14</sup>

Eight commenters suggested that FINRA revise the timing of principal review requirement.<sup>15</sup> Paragraph (c) requires a registered principal to review a transaction and determine whether he or she approves of it prior to transmitting the customer's application to the issuing insurance company for processing, but no later than seven business days after the customer signs the application.<sup>16</sup> Commenters stated that beginning the seven business day review period from the time when the customer signs the application is problematic because often the customer signs and mails the application, leaving the broker-dealer no control over the timing.<sup>17</sup> Commenters also stated that they have no control over which means a customer uses to mail an application and how long it takes for that application to arrive at the broker-dealer.<sup>18</sup> Some commenters suggested that the principal review process be required to be completed seven business days after the broker-dealer has received an application "in good order."<sup>19</sup> Other commenters suggested that the seven-day period should begin when the broker-dealer receives the application

<sup>12</sup> See Letter from MaryAnn Lamendola, Chief Compliance Officer, Chase Investment Services Corporation (Jan. 24, 2008) ("Chase Letter"); ACLI Letter; Comm. of Annuity Insurers Letter; Dechert Letter; NAVA Letter; SIFMA Letter. One of these commenters believes that both the broker-dealer and the issuing insurance company should be allowed to negotiate checks upon receipt. See Dechert Letter. This commenter noted that customers may send back an application and one check to cover a variable annuity and other investment options, including mutual funds. *Id.* In this situation, the commenter stated there is a conflict between NASD Rule 2830(m), which requires the prompt purchase of mutual fund shares, and Rule 2821(c), which requires the broker-dealer to hold the customer's check pending principal review. *Id.*

<sup>13</sup> See ACLI Letter; Comm. of Annuity Insurers Letter; Dechert Letter. One commenter noted this could be accomplished by the broker-dealer developing controls to ensure that a variable annuity is not issued until after the completion of principal review. Chase Letter.

<sup>14</sup> *Id.*

<sup>15</sup> See Letter from Barbara Gill, Deputy Director of Regulatory Affairs, Stifel, Nicolaus & Company, Inc. (Jan. 22, 2008) ("Stifel Letter"); Comm. of Annuity Insurers Letter; Dechert Letter; FSI Letter; ICI Letter; NAVA Letter; SIFMA Letter; Schwab Letter.

<sup>16</sup> See NASD Rule 2821(c).

<sup>17</sup> See, e.g., Comm. of Annuity Insurers Letter; Dechert Letter; SIFMA Letter; Stifel Letter.

<sup>18</sup> *Id.*

<sup>19</sup> See, e.g., ACLI Letter; ICI Letter; T. Rowe Price Letter.

and the broker-dealer reasonably deems the application is complete.<sup>20</sup>

Two commenters requested that FINRA propose a single implementation date for the entire rule.<sup>21</sup> These commenters stated that establishing two different compliance dates would create confusion when implementing the proposed rule as well unnecessary and redundant system design costs.<sup>22</sup> Paragraph (d) requires members to establish supervisory procedures reasonably designed to achieve compliance with the rule and paragraph (e) require members to develop training policies and programs to ensure compliance with the rule. One of these commenters believed imposing two separate compliance dates would require broker-dealers to provide duplicate sets of supervisory procedures to account for what the rule requires on May 5, 2008 and for what it requires on August 4, 2008.<sup>23</sup> It also stated broker-dealers would have to implement one training program for the part of rule becoming effective on May 5, 2008 and another training program for principal review starting on August 4, 2008.<sup>24</sup>

#### IV. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change and the comments, and 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. In particular, the Commission finds that the proposed rule change is consistent with section 15A(b)(6) of the Act, which requires, among other things, that the rules of a national securities association 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.<sup>25</sup>

The proposed rule change does not change any of the substantive provisions of Rule 2821. It allows broker-dealers additional time to comply with one portion of the rule and provides FINRA with additional time to further consider its members' concerns. It is consistent

<sup>20</sup> See Comm. of Annuity Insurers Letter; Dechert Letter; FSI Letter; NAVA Letter; Schwab Letter. Three commenters also specified that the seven days should not begin to run until a complete application is specifically received by the broker-dealer's Office of Supervisory Jurisdiction. See Comm. of Annuity Insurers Letter; Dechert Letter; SIFMA Letter.

<sup>21</sup> See ACLI Letter; Dechert Letter.

<sup>22</sup> *Id.*

<sup>23</sup> See Dechert Letter.

<sup>24</sup> *Id.*

<sup>25</sup> 15 U.S.C. 78o-3(b)(6).

with the requirements of the Act for FINRA to further consider paragraph (c) of Rule 2821 and its related Regulatory Notice to determine whether any unintended or harmful consequences might ensue upon the current effective date.

#### V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>26</sup> that the proposed rule change (SR-FINRA 2007-040) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>27</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57247; File No. SR-FINRA-2008-002]

#### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Reflect That the NASD/NYSE Trade Reporting Facility Does Not Support the Three-Party Trade Report Functionality

January 31, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 28, 2008, 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 filed this proposal pursuant to section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>26</sup> 15 U.S.C. 78s(b)(2).

<sup>27</sup> 17 CFR 200.30-3(a)(12).

<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)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> 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).

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA proposes to amend the rules governing the NASD/NYSE Trade Reporting Facility ("NASD/NYSE TRF") to delete NASD Rule 4632E(d), relating to three-party trade reports, because the NASD/NYSE TRF currently does not support the three-party trade report functionality. In addition, FINRA proposes to modify NASD Rule 4632E(c), relating to two-party trade reports, to conform NASD Rule 4632E(c) to the two-party trade report rules of FINRA's other Trade Reporting Facilities ("TRFs").<sup>6</sup>

The text of the proposed rule change is available at <http://www.finra.org>, the principal office of FINRA, and 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 TRFs, including the NASD/NYSE TRF, provide FINRA members with mechanisms for reporting trades in NMS stocks, as defined in Rule 600(b)(47) of Regulation NMS under the Act,<sup>7</sup> executed otherwise than on an exchange. When the NASD/NYSE TRF was established, it was contemplated that members would be able to report trades to the NASD/NYSE TRF using either two- or three-party trade reports.<sup>8</sup>

<sup>6</sup> Effective July 30, 2007, FINRA was formed through the consolidation of NASD and the member regulatory functions of NYSE Regulation. Accordingly, the NASD/NYSE TRF is now doing business as the FINRA/NYSE TRF. In addition to the NASD/NYSE TRF, there are two other TRFs in operation: The NASD/Nasdaq Trade Reporting Facility (the "NASD/Nasdaq TRF") and the NASD/NSX Trade Reporting Facility (the "NASD/NSX 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.

<sup>7</sup> 17 CFR 242.600(b)(47).

<sup>8</sup> See NASD Rules 4632E(c) and 4632E(d), respectively. Current NASD Rules 4632E(c) and (d)

A three-party trade report is a single trade report that denotes one Reporting Member (*i.e.*, the member with the obligation to report the trade under FINRA's rules) and two contra parties.

However, the NASD/NYSE TRF has not implemented the three-party trade report functionality and members currently are able to submit reports to the NASD/NYSE TRF only in the two-party trade report format.<sup>9</sup> Accordingly, for its rules to accurately reflect the functionality of the NASD/NYSE TRF, FINRA proposes to delete NASD Rule 4632E(d) relating to three-party trade reports. In addition, FINRA proposes to replace the two-party trade report provisions currently found in paragraph (c) of NASD Rule 4632E with a new paragraph (c), which is identical to the two-party trade report provisions of the NASD/Nasdaq TRF and the NASD/NSX TRF. According to FINRA, this will conform, to the extent practicable, the rules relating to the three TRFs.<sup>10</sup> Finally, FINRA proposes technical changes to paragraphs (c), (d), and (h) of NASD Rule 6130E to reflect the deletion of NASD Rule 4632E(d) and the resulting renumbering of paragraphs in NASD Rule 4632E.

FINRA has asked the Commission to waive the 30-day operative delay and to make the proposed rule change operative on the date of filing.

#### 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,<sup>11</sup> which requires, among other things, that FINRA's 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 functionality that is not currently supported by the NASD/NYSE TRF, the proposed rule change will prevent member confusion and trade reporting errors.

are substantially similar to the reporting requirements relating to two- and three-party trade reports for FINRA's Alternative Display Facility (the "ADF"). See NASD Rules 4632A(c) and (d).

<sup>9</sup> The NASD/NYSE TRF may implement this functionality at a later date, in which case FINRA would submit a proposed rule change to amend its rules accordingly.

<sup>10</sup> Neither the NASD/Nasdaq TRF nor the NASD/NSX TRF supports three-party trade reports. Accordingly, members may submit trades to a TRF only in the two-party trade report format. Members may submit trades in the three-party trade report format to the ADF.

<sup>11</sup> 15 U.S.C. 78o-3(b)(6).

### 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 designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) 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. In addition, as required under Rule 19b-4(f)(6)(iii),<sup>12</sup> FINRA provided the Commission with written notice of its intention to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to filing the proposal with the Commission. Therefore, the foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup>

Pursuant to Rule 19b-4(f)(6)(iii) under the Act, a proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if 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 relating to the three-party trade report functionality, which currently is not supported by the NASD/NYSE TRF, and the adoption of conforming changes to the NASD/NYSE TRF's two-party trade report provisions. FINRA believes that these changes will prevent potential member confusion and trade reporting errors. FINRA notes, in addition, that the proposal amends the NASD/NYSE TRF's trade reporting rules to accurately reflect the current functionality of the NASD/NYSE TRF, but does not affect members' reporting obligations or current capability.

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the deletion of the three-party trade report provisions is designed to ensure that the rules governing the NASD/NYSE TRF accurately reflect the operation of the NASD/NYSE TRF, which currently does not support the three-party trade report functionality.<sup>15</sup> Similarly, the proposed changes to conform the NASD/NYSE TRF's two-party trade report rules to the two-party trade report rules of the NASD/Nasdaq TRF and the NASD/NSX TRF<sup>16</sup> will provide consistency among the rules of the TRFs and does not raise new regulatory issues. Accordingly, the Commission waives the 30-day operative delay and designates the proposal to be operative upon filing with the Commission.

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

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-2008-002 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 No. SR-FINRA-2008-002. 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

<sup>15</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>16</sup> See NASD Rules 4632(c) and 4632C(c).

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. Copies of the 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 No. SR-FINRA-2008-002 and should be submitted on or before February 27, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57237; File No. SR-ISE-2007-124]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Equity Fees

January 30, 2008.

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 December 31, 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 ISE. On January 28, 2007, ISE submitted Amendment No. 1 to the proposed rule

change.<sup>3</sup> ISE filed the proposal pursuant to section 19(b)(3)(A)(ii) of the Act<sup>4</sup> and Rule 19b-4(f)(2)<sup>5</sup> thereunder, as establishing or changing a due, fee, or other charges applicable to a member, which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

ISE is proposing to amend its Schedule of Fees with respect to equity transactions. The text of the proposed rule change is available at ISE, <http://www.ise.com>, and 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, 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 Exchange 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 Exchange proposes to amend its Schedule of Fees to: (1) Distinguish between transaction fees related to equity orders and equity orders submitted on an order delivery basis; (2) to increase the rebate for equity orders that add liquidity for securities that trade at or above \$1.00 from \$0.0025 to \$0.0032; (3) to increase the rebate for equity orders submitted on an order delivery basis that add liquidity for securities that trade at or above \$1.00 from \$0.0025 to \$0.0027 (these orders are submitted by Order Delivery Equity Electronic Access Members ("Order Delivery Equity EAMs")); and (4) to cease sharing market data revenues except with respect to orders submitted on an order delivery basis. The

<sup>3</sup> In Amendment No. 1, the Exchange made clarifying changes to the purpose section of the filing.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

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

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

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