

licenses in 2010 or is ineligible to purchase trading licenses thereafter may purchase trading licenses (to the extent there are available unsold licenses) at such time as it is no longer three months in arrears in its payments.

### III. Discussion and Commission Findings

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 exchange<sup>7</sup> and, in particular, the requirements of Sections 6(b)(4), 6(b)(5) and 6(b)(7) of the Act.<sup>8</sup> Section 6(b)(4) of the Act<sup>9</sup> requires that the rules of the exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Section 6(b)(5) of the Act<sup>10</sup> requires, among other things, that the rules of a national securities exchange are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Section 6(b)(7) of the Act<sup>11</sup> requires, among other things, that the exchange's rules provide fair procedures for prohibiting or limiting any person with respect to access to services offered by the exchange or member thereof.

The Commission believes that the proposal is consistent with Section 6(b)(4) of the Act<sup>12</sup> in that it provides for an equitable allocation of fees among member organizations. The Exchange represents that it relies in part on the revenues from trading license fees to pay for the maintenance of the trading floor and to fund its trading floor regulatory activities. The trading license fees and rules limiting the number of trading licenses that may be initially applied for are the same for all member organizations, and member organizations would be denied trading floor privileges only if they have not paid the trading license fee for several months. The Commission notes that the proposal may encourage member organizations to pay their bills more promptly and thereby enable the Exchange to avoid imposing the cost of the nonpayment by a small number of member organizations on the majority of

other member organizations that routinely pay on time.

The Commission also believes that the proposal is consistent with Sections 6(b)(5) and 6(b)(7) of the Act. The Commission notes that the new procedures specify procedures to provide notice to member organizations of a pending denial or revocation. In addition, member organizations receive monthly trading license bills that reflect unpaid balances from previous periods. The Exchange has also represented that it would distribute an Information Memorandum to its member organizations to inform them of the proposed rule change.<sup>13</sup> Thereafter, the procedures provide that, one calendar month prior to the Expiration Date, the Exchange will notify each applicable member organization that is currently two months or more in arrears in paying monthly installments of the trading license fee payable in respect of any previously purchased trading license of the amount of then overdue trading license installment payments and the possibility of denial of renewal or revocation of the trading license on the Expiration Date. The notice must include a description of the appeal process.

The Commission also notes that the proposal clarifies the scope of the Exchange's review on appeal and sets forth specific time frames for scheduling and conducting an appeal of a pending denial or revocation. If the member organization believes the Exchange's records are incorrect, the member organization must submit a written appeal within five business days of receipt of the Exchange's notice, providing an explanation as to why it believes the Exchange's records are incorrect, and providing copies of any relevant documentation. In addition, the Exchange must provide a final determination in writing in response to any such appeal no later than 15 calendar days prior to the effective date of the potential denial of renewal or revocation of the applicable trading license. If the Exchange denies the appeal, its written final determination must specifically address the arguments made by the member organization in its submission. The written determination shall be final and conclusive action by the Exchange. In addition, the Exchange

has required a written record of any proceedings.

For these reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act.<sup>14</sup>

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>15</sup> that the proposed rule change (SR-NYSE-2010-03) is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-5214 Filed 3-10-10; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61648; File No. SR-FINRA-2010-009]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Provide Additional Relief Relating to Certain FINRA/Nasdaq Trade Reporting Facility and OTC Reporting Facility Fees

March 4, 2010.

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 March 1, 2010, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, 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.

<sup>7</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f(b)(4); 15 U.S.C. 78f(b)(5); 15 U.S.C. 78f(b)(7).

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78f(b)(7).

<sup>12</sup> 15 U.S.C. 78f(b)(4).

<sup>13</sup> The first such notice will be sent to member organizations that are two months or more in arrears as of the end of February 2010. See e-mail from John Carey, Chief Counsel—U.S. Equities, NYSE Euronext LLC, to David Liu, Assistant Director, and Leigh W. Duffy, Attorney-Adviser, Division of Trading and Markets, Commission, dated January 25, 2010.

<sup>14</sup> 15 U.S.C. 78f.

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

<sup>16</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)(ii).

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

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

FINRA is proposing to waive and issue a credit for fees that were charged to FINRA members under FINRA Rules 7620A and 7710 for the submission of "as/of" trade reports to the FINRA/Nasdaq Trade Reporting Facility ("FINRA/Nasdaq TRF") and the OTC Reporting Facility ("ORF"), respectively, for trades executed on eight days in the months of August and September 2009. The relief proposed herein is in addition to the fee relief provided under SR-FINRA-2009-088. The proposed rule change does not require amendments to any FINRA rules.

## **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**

Pursuant to FINRA Rules 7620A and 7710, members are charged fees for trade reporting to the FINRA/Nasdaq TRF and ORF, respectively, and the fee for the submission of late trade reports, including "as/of" reports, is higher than the fee for the submission of timely trade reports. "As/of" reports are reports of trades that were executed on a date prior to the date they were reported.

During the months of August and September 2009, various Automated Confirmation Transaction Service ("ACT") technology issues impacted trade reporting to the FINRA/Nasdaq TRF and the ORF for a period of eight days: August 3, August 4, August 5, August 17, August 21, September 16, September 25 and September 28. Due to the ACT technology issues, members were unable to report trades on trade date and thus incurred higher than normal reporting charges due to the higher number of "as/of" reports that they were compelled to submit.

On December 7, 2009, FINRA filed proposed rule change SR-FINRA-2009-088, and on December 17, 2009, the SEC

published notice of filing and immediate effectiveness of SR-FINRA-2009-088 in the **Federal Register**.<sup>5</sup> In that filing, FINRA proposed to waive the fees for "as/of" trade reports submitted on the following days in 2009: August 4, August 5, August 6, August 18, August 24, September 17, September 28 and September 29. These dates are the next business day (T+1) following the days on which the ACT technology issues occurred. The relief proposed in SR-FINRA-2009-088 was based on the assumption that members that were unable to report on trade date due to ACT technology issues reported the trades on the following business day (T+1).

Subsequent to publication of notice in the **Federal Register**, however, FINRA obtained additional information from Nasdaq, the FINRA/Nasdaq TRF "Business Member" and ACT technology provider, and it was determined that the scope of the relief provided under SR-FINRA-2009-088 is too narrow. Some members that were unable to report on trade date did not, in fact, report on the following business day (T+1), but reported two (or perhaps more) days after trade date (T+2 or later). The relief provided under SR-FINRA-2009-088 does not reach these members.

Accordingly, FINRA is proposing to waive the fees for all "as/of" trade reports submitted on T+2 or later to the FINRA/Nasdaq TRF and ORF that have a trade execution date of August 3, August 4, August 5, August 17, August 21, September 16, September 25 and September 28, 2009 (i.e., the dates on which the ACT technology issues occurred). The proposed relief will apply to fees for "as/of" trade reports submitted through December 31, 2009. Members will be issued a credit for the fees on a future invoice.<sup>6</sup>

The proposed relief is in addition to the relief provided in SR-FINRA-2009-088 for fees charged on "as/of" trade reports submitted on T+1. FINRA believes that such additional relief is appropriate in order to make all members whole, since the higher charges were the result of an ACT technology issue and not the fault of the member.

<sup>5</sup> See Securities Exchange Act Release No. 61160 (December 14, 2009), 74 FR 67284 (December 18, 2009) (Notice of Filing and Immediate Effectiveness of SR-FINRA-2009-088).

<sup>6</sup> FINRA notes that a similar proposal to waive and issue a credit for certain cancel fees was the subject of a filing by NASDAQ OMX PHLX, Inc. See Securities Exchange Act Release No. 60853 (October 21, 2009), 74 FR 55594 (October 28, 2009) (Notice of Filing and Immediate Effectiveness of File No. SR-PHLX-2009-89).

FINRA has filed the proposed rule change for immediate effectiveness. The operative date will be the date of filing.

#### **2. Statutory Basis**

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,<sup>7</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 waiver and credit of the "as/of" reporting fees is fair and equitable in that it will apply uniformly to all FINRA members that submitted "as/of" trade reports to the FINRA/Nasdaq TRF and ORF for trades with the designated trade dates.

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

FINRA does not believe that the proposed rule change will impose any burden on competition 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**

No written comments were either solicited or 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)(ii) of the Act<sup>8</sup> and paragraph (f)(2) of Rule 19b-4 thereunder.<sup>9</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**

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:

<sup>7</sup> 15 U.S.C. 78o-3(b)(5).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

*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-2010-009 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-2010-009. 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 Web site viewing and printing 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 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-2010-009 and should be submitted on or before April 1, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**  
Deputy Secretary.

[FR Doc. 2010-5217 Filed 3-10-10; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-61643; File No. SR-NYSEAmex-2010-16]

**Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Deleting Rules 993NY and 945**

March 3, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on February 24, 2010, NYSE Amex LLC ("NYSE Amex" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 Exchange proposes to delete Rules 993NY and 945, which governed processing of orders received through the OCC Hub. The text of the proposed rule change is available on NYSE Amex's Web site at <http://www.nyse.com>, on the Commission's Web site at <http://www.sec.gov>, at NYSE Amex, 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, the self-regulatory organization 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 those 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 parts of such statements.

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

**1. Purpose**

The purpose of this filing is to delete outdated rules related to the receipt,

execution, and reporting of Principal ("P") and Principal Acting as Agent ("P/A") entered to the Exchange through the order routing hub developed by the Options Clearing Corporation ("OCC Hub"). The affected Rules are NYSE Amex Rule 993NY—Temporary Rule Governing P and P/A orders, and Rule 945 Liability for the Options Intermarket Linkage.

At the time of approval of the Options Order Protection and Locked/Crossed Market Plan ("New Plan") and the simultaneous withdrawal of the Exchange from the Plan for the Purpose of Creating and Operating an Intermarket Options Linkage ("Old Plan"), the Exchange also filed and received approval for rules implementing the New Plan.<sup>3</sup> Certain Participants to the New Plan did not have technology in place to take full advantage of the New Plan, and remained dependent on the OCC Hub to route orders to markets at the NBBO. The Exchange was aware that such dependence might occur, and included a Temporary Rule Governing P and P/A Orders as part of the implementing rules for the New Plan.

Additionally, because the OCC Hub remained connected to the Exchange, Rule 945, Liability for the Options Intermarket Linkage, was not eliminated with the other rules related to the Old Plan.

All of the Participant Exchanges have now migrated off the OCC Hub; consequently the rules related to the OCC Hub and the Old Plan are no longer necessary.

**2. Statutory Basis**

The Exchange believes the proposed rule change is consistent with Section 6(b)<sup>4</sup> of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5)<sup>5</sup> in particular in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest, as the rules are now obsolete and should be removed from the rule set.

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

The Exchange does not believe that the proposed rule change will impose

<sup>3</sup> Exchange Act Release No. 60526 (August 18, 2009) (NYSEAmex-2009-19) 74 FR 43185 (August 26, 2009).

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78f(b)(5).

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

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

<sup>10</sup> 17 CFR 200.30-3(a)(12).