

benefits of increased transparency and access to more comprehensive trade information in the OTC markets.

## V. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>48</sup> for approving the proposed rule change, as modified by Amendments No. 1 and 2 thereto, prior to the 30th day after the date of publication of Amendment No. 2 in the **Federal Register**. The changes proposed in Amendment No. 2 are minor in nature or respond to specific concerns raised by commenters. In Amendment No. 2, the Exchange proposed to change the requirement to report the cancellation of a trade executed during normal market hours and canceled before 4 p.m. on the date of execution from 90 seconds to 30 seconds in Rule 6282(j)(2)(A).<sup>49</sup> Amendment No. 2 also reflects changes approved in SR-FINRA-2009-082 to the text of Rules 6380A(g)(2)(A), 6380B(f)(2)(A) and 6622(f)(2)(A).<sup>50</sup>

Accordingly, the Commission finds that good cause exists to approve the proposal, as modified by Amendments Nos. 1 and 2, on an accelerated basis.

## VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 2 to 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-2009-061 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-2009-061. 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of FINRA.<sup>51</sup> 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-2009-061 and should be submitted on or before April 28, 2010.

## VII. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-FINRA-2009-061), as modified by Amendments Nos. 1 and 2, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>52</sup>

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

[FR Doc. 2010-7843 Filed 4-6-10; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61817; File No. SR-FINRA-2010-011]

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

March 31, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

<sup>51</sup> The text of the proposed rule change, as modified by Amendments Nos. 1 and 2, is available on FINRA's Web site at <http://www.finra.org>, on the Commission's Web site at <http://www.sec.gov>, at FINRA, and at the Commission's Public Reference Room.

<sup>52</sup> 17 CFR 200.30-3(a)(12).

("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 12, 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.

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

FINRA is proposing to amend FINRA Rule 7620A to modify certain fees applicable to members that use the FINRA/Nasdaq Trade Reporting Facility (the "FINRA/Nasdaq TRF").

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

##### Background

The FINRA/Nasdaq TRF is a facility of FINRA that is operated by The NASDAQ OMX Group, Inc. ("NASDAQ OMX") and utilizes Automated Confirmation Transaction ("ACT") Service technology. In connection with the establishment of the FINRA/Nasdaq

<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).

<sup>48</sup> 15 U.S.C. 78s(b)(2).

<sup>49</sup> The requirement to report cancellations in 90 seconds was established by SR-FINRA-2009-082. See Cancellations Order, *supra* note 8.

<sup>50</sup> See Cancellations Order, *supra* note 8.

TRF, FINRA and NASDAQ OMX entered into a limited liability company agreement (the "LLC Agreement"). Under the LLC Agreement, FINRA, the "SRO Member," has sole regulatory responsibility for the FINRA/Nasdaq TRF. NASDAQ OMX, the "Business Member," is primarily responsible for the management of the FINRA/Nasdaq TRF's business affairs, including establishing pricing for use of the FINRA/Nasdaq TRF, to the extent those affairs are not inconsistent with the regulatory and oversight functions of FINRA. Additionally, the Business Member is obligated to pay the cost of regulation and is entitled to the profits and losses, if any, derived from the operation of the FINRA/Nasdaq TRF.

Pursuant to Rule 7620A, FINRA members are charged fees for trade reporting to the FINRA/Nasdaq TRF. The current fee structure for reports of "locked-in trades" (i.e., trades that are not submitted for ACT comparison and do not require specific acceptance by the contra party) is based on (1) the number of reports submitted to the FINRA/Nasdaq TRF in which the member is identified as a party to the trade; (2) whether the transaction is "media" eligible (i.e., the trade report is submitted to FINRA for public dissemination by the Securities Information Processors);<sup>5</sup> (3) whether the trade report is submitted for clearance and settlement related functions; and (4) whether the transaction is in a non-Nasdaq exchange-listed security that is reported to one of the Consolidated Tape Association ("CTA") tapes.<sup>6</sup> Members must pay a fee for reports submitted to the FINRA/Nasdaq TRF with respect to media-eligible locked-in transactions in non-Nasdaq exchange-listed (or CTA) securities. A member that exceeds, in any given month, a daily average of 5,000 media reports in which the member is identified as the reporting party is afforded a cap on its fees equal to \$145 (\$0.029 multiplied by 5,000) multiplied by the number of trading days in the month. By contrast, there

currently is no fee for the submission of locked-in reports for media-eligible transactions in Nasdaq-listed securities.

#### *Proposed Fee Schedule*

NASDAQ OMX, as the Business Member, has determined to replace the current fee schedule for reporting "locked-in" trades to the FINRA/Nasdaq TRF with a new fee schedule applicable to "Non-Comparison/Accept (Non-Match/Compare)" trades. Such trades are defined as transactions that are not subject to the ACT comparison process, and they may be submitted as media or non-media, clearing or non-clearing, AGU (automated give-up), QSR (Qualified Service Representative), one-sided and internalized crosses.<sup>7</sup>

Accordingly, FINRA is proposing to amend Rule 7620A to reflect the new fee schedule. Under the proposed schedule, for each media and non-media report submitted to the FINRA/Nasdaq TRF, both the member identified in the report as the "Executing Party (EP)" and the member identified as the "Contra (CP)" will be assessed a fee.<sup>8</sup> Thus, the proposed rule change establishes four categories of fees (Media/Executing Party, Non-Media/Executing Party, Media/Contra and Non-Media/Contra), and each category is applicable to transactions in each of the three Tapes (Tapes A, B and C).<sup>9</sup> A member will be assessed a transaction fee of \$0.018 if it is the Executing Party, and \$0.013 if it is the Contra, multiplied by the number of same-type reports (i.e., media or non-media) submitted in a given month.

Additionally, the proposed fee schedule includes a cap applicable to each of the four new fee categories based on the average daily volume of reports submitted to a particular Tape. To be eligible for a cap in a particular

Tape, a member must achieve a minimum average daily volume of media reports submitted to that Tape as Executing Party in a given month. (The proposed volume threshold for all three Tapes is 2,500.)<sup>10</sup> Thus, the proposed rule change would reduce the per unit fee traditionally assessed (from \$0.029 to \$0.018 and \$0.013, as applicable), as well as the volume threshold required to achieve a fee cap (from 5,000 to 2,500).

Trade reports in which the member appears as the Contra Party do not contribute to achievement of the cap. However, if a member is eligible for a cap based on media trade reports in which it appears as the Executing Party, then caps also would apply to media reports in which that member appears as the Contra Party, as well as to non-media reports where the member appears as Executing Party or Contra Party. Thus, once a member achieves a cap (based on the number of Media/Executing Party reports), under the current proposal, the maximum number of billable trade reports applicable to each fee category is 2,500 for Tape A, B or C. The maximum number of billable Media/Executing Party reports will always be equal to the daily average number of Media/Executing Party trades needed to qualify for a cap for Tape A, B or C, as specified in the Rule. For each of the other three fee categories (Non-Media/Executing Party, Media/Contra and Non-Media/Contra), the maximum number of billable trades also is specified in the Rule and can be adjusted independently of the Media/Executing Party cap.<sup>11</sup> Under the current proposal, if a member is eligible for the fee cap, it will be assessed a maximum fee within each category equal to the category fee (either \$0.018 or \$0.013) multiplied by 2,500 multiplied by the number of trading days in the month.

The following table provides an example of the fee schedule applicable to a member that is ineligible for a fee cap (based on 22 trading days in the month):

<sup>10</sup> Although the proposed fee schedule includes identical average daily volume thresholds for all three Tapes, the thresholds are independent of each other and, as such, may be subsequently adjusted individually. Any change to one or more of these thresholds would be subject to a future proposed rule change by FINRA.

<sup>11</sup> Any change to one or more of these caps would be subject to a future proposed rule change by FINRA.

<sup>5</sup> "Non-media" reports are not submitted to FINRA for public dissemination purposes, but are submitted for regulatory and/or clearance and settlement purposes.

<sup>6</sup> Market data is transmitted to three tapes based on the listing venue of the security: New York Stock Exchange securities ("Tape A"), American Stock Exchange and regional exchange securities ("Tape B"), and Nasdaq Stock Market securities ("Tape C"). Tape A and Tape B are generally referred to as the Consolidated Tape.

<sup>7</sup> FINRA is proposing to adopt Supplementary Material in Rule 7260A to define a number of terms used in the proposed fee schedule, including "Non-Comparison/Accept (Non-Match/Compare)" trades.

<sup>8</sup> Pursuant to the proposed Supplementary Material, the "Executing Party (EP)" is defined as the member with the trade reporting obligation under FINRA rules, and the "Contra (CP)" is defined as the member on the contra side of a trade report. These positions formerly were identified in FINRA rules as the "Market Maker" or "MM" side and the "Order Entry" or "OE" side, respectively.

FINRA notes that non-members (non-member broker-dealers and customers) are not assessed fees under FINRA rules.

<sup>9</sup> The four categories of fees are independent of each other and, as such, may be subsequently adjusted individually. Any change to one or more of these categories would be subject to a future proposed rule change by FINRA.

## NO FEE CAP—TAPE A

Report type/side	Average daily trades	Billable trades	Rate	Cost
Media/EP .....	2,100	2,100	\$0.018	\$832
Non-Media/EP .....	4,000	4,000	0.018	1584
Media/Contra .....	3,000	3,000	0.013	858
Non-Media/Contra .....	2,100	2,100	0.013	601
Total .....	11,200	11,200	.....	3,875

The following table provides an example of the fee schedule applicable

to a member that is eligible for a fee cap (based on 22 trading days in the month):

## FEE CAP—TAPE A

Report type/side	Average daily trades	Billable trades	Rate	Cost
Media/EP .....	4,000	2,500	\$0.018	\$990
Non-Media/EP .....	4,000	2,500	0.018	990
Media/Contra .....	4,000	2,500	0.013	715
Non-Media/Contra .....	4,000	2,500	0.013	715
Total .....	16,000	10,000	.....	3,410

FINRA notes that the proposed rule change does not propose to modify the other fees assessed under Rule 7620A, specifically: the fee assessed a member for submitting a clearing report to the FINRA/Nasdaq TRF to transfer a transaction fee pursuant to Rule 7230A(h); the “Comparison” fee; the “Late Report—T+N” fee; the “Query” fee; and the “Corrective Transaction Charge.”

NASDAQ OMX, as the Business Member, has advised FINRA that it believes that the proposed fee schedule more equitably allocates the fees assessed to members for their use of the FINRA/Nasdaq TRF. Under current Rule 7620A, the fee burden can fall disproportionately on certain parties (e.g., reporting parties submitting media-only reports (with no clearing) of transactions in CTA securities and contra parties to locked-in trades in CTA securities). Under the proposed fee schedule, both members identified as parties to the trade in the trade report will be assessed a fee. In addition, the proposed fee schedule introduces fees for reports of transactions in Nasdaq-listed securities, as well as non-media, non-clearing trade reports, which have historically not been assessed a fee. NASDAQ OMX believes that extending fees for the submission of these reports is consistent with its goal of fairly and equitably distributing the costs associated with the operation and maintenance of the FINRA/Nasdaq TRF. Thus, the proposed fees for the

submission of non-comparison trade reports to the FINRA/Nasdaq TRF are spread more equitably across parties (Executing Party and Contra), as well as report type (media and non-media) and security type (Nasdaq-listed and non-Nasdaq exchange-listed). NASDAQ OMX believes that the proposed reduction in fees is appropriate given that the burden of paying for the use of the FINRA/Nasdaq TRF will be shared by all participants across the full range of transactions.

FINRA has filed the proposed rule change for immediate effectiveness. FINRA is proposing that the operative date of the proposed rule change will be April 1, 2010.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,<sup>12</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 fee schedule is fair and provides an equitable allocation of fees in that it will apply uniformly to all FINRA members that use the FINRA/Nasdaq TRF.

<sup>12</sup> 15 U.S.C. 78o-3(b)(5).

## 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

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>13</sup> and paragraph (f)(2) of Rule 19b-4 thereunder.<sup>14</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

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

<sup>14</sup> 17 CFR 240.19b-4(f)(2).

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-2010-011 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-2010-011. 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 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-2010-011 and should be submitted on or before April 28, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-7842 Filed 4-6-10; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61815; File No. SR-NYSEAmex-2010-32]

### Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Period To Receive Inbound Routes From Archipelago Securities LLC

March 31, 2010.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on March 29, 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 and II, 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 extend the pilot period of the Exchange's prior approvals to receive inbound routes of orders from Archipelago Securities LLC ("Arca Securities"), an NYSE Amex affiliated member. A copy of this filing is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's principal office 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

Currently, Arca Securities is the approved outbound order routing

facility of the Exchange.<sup>3</sup> Arca Securities is also the approved outbound order routing facility of the New York Stock Exchange ("NYSE") and NYSE Arca, Inc. ("NYSE Arca").<sup>4</sup> The Exchange has also been previously approved to receive inbound routes of orders by Arca Securities in its capacity as an order routing facility of NYSE Arca and the NYSE.<sup>5</sup> The Exchange's authority to receive inbound routes of orders by Arca Securities is subject to a pilot period ending March 31, 2010.<sup>6</sup> The Exchange hereby seeks to extend the previously approved pilot period (with the attendant obligations and conditions) for an additional six months, through September 30, 2010.

###### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>7</sup> of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5)<sup>8</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the proposed rule change will allow the Exchange to continue receiving inbound routes of equities orders from Arca Securities acting in its

<sup>3</sup> See Securities Exchange Act Release No. 59009 (November 24, 2008), 73 FR 73363 (December 2, 2008) (order approving SR-NYSEALTR-2008-07); see also, Securities Exchange Act Release No. 59473 (February 27, 2009) 74 FR 9853 (March 6, 2009) (order approving SR-NYSEALTR-2009-18).

<sup>4</sup> See Securities Exchange Act Release No. 55590 (April 5, 2007), 72 FR 18707 (April 13, 2007) (notice of immediate effectiveness of SR-NYSE-2007-29); see also, Securities Exchange Act Release No. 58680 (September 29, 2008), 73 FR 58283 (October 6, 2008) (order approving SR-NYSE-2008-76). See Securities Exchange Act Release No. 53238 (July 28, 2006), 71 FR 44758 (August 7, 2006) (order approving SR-NYSEArca-2006-13); see also, Securities Exchange Act Release No. 52497 (September 22, 2005), 70 FR 56949 (September 29, 2005) (SR-PCX-2005-90); see also, Securities Exchange Act Release No. 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR-PCX-00-25); see also, Securities Exchange Act Release No. 58681 (September 29, 2008), 73 FR 58285 (October 6, 2008) (order approving NYSEArca-2008-90).

<sup>5</sup> See Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (order approving SR-Amex-2008-62). See also, Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (order approving SR-AMEX-2008-63).

<sup>6</sup> See Securities Exchange Act Release No. 61269 (December 31, 2009), 75 FR 1097 (January 8, 2010) (notice of immediate effectiveness of SR-NYSEAmex-2009-91).

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

<sup>8</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>15</sup> 17 CFR 200.30-3(a)(12).