

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56751; File No. SR-FINRA-2007-019]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to NYSE Rule 2

November 6, 2007.

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 October 25, 2007, the 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, which Items have been substantially prepared by FINRA.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is simultaneously approving the proposal on an accelerated basis.

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

FINRA is proposing to amend the definition of "member organization" in FINRA's NYSE Rule 2(b)<sup>4</sup> to reflect that FINRA membership is a condition of being an NYSE member organization. The proposed rule change conforms FINRA's NYSE Rule 2(b) to a recently approved rule change by the NYSE to its version of Rule 2(b).<sup>5</sup> The text of the

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

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

<sup>3</sup> On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD's Certificate of Incorporation to reflect its name change to the Financial Industry Regulatory Authority, Inc., or FINRA, in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. ("NYSE Regulation"). See Securities Exchange Act Release No. 56146 (July 26, 2007), 72 FR 42190 (August 1, 2007).

<sup>4</sup> FINRA has incorporated into its rulebook certain rules of the New York Stock Exchange, LLC ("NYSE"), including NYSE Rule 2. This incorporated NYSE rule applies solely to those members of FINRA that are also members of NYSE on or after July 30, 2007 ("Dual Members"), until such time as FINRA adopts a consolidated rulebook applicable to all of its members. The incorporated NYSE rules apply to the same categories of persons to which they applied as of July 30, 2007. In applying the incorporated NYSE rules to Dual Members, FINRA also has incorporated the related interpretive positions set forth in the NYSE Rule Interpretations Handbook and NYSE Information Memos.

<sup>5</sup> See Securities Exchange Act Release No. 56654 (October 12, 2007), 72 FR 59129 (October 18, 2007)

proposed rule change is available at FINRA, the Commission's Public Reference Room, and <http://www.finra.org>.

#### 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 III 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

On July 30, 2007, NASD and NYSE Regulation consolidated their member firm regulation operations into a combined organization, FINRA. To enable FINRA to meet its new regulatory responsibilities, the NYSE amended NYSE Rule 2(b) to require FINRA membership as a condition of being an NYSE member organization. The proposed rule change would make a conforming change to FINRA's NYSE Rule 2(b).<sup>6</sup>

The effective date of the proposed rule change is October 12, 2007, which is the effective date of the NYSE's identical amendments to NYSE Rule

(Order Approving Proposed Rule Change Relating to NYSE Rule 2; File No. SR-NYSE-2007-67) ("Release No. 34-56654").

<sup>6</sup> Pursuant to Rule 17d-2 under the Act, 17 CFR 240.17d-2, NASD, NYSE, and NYSE Regulation, Inc. entered into an agreement ("Agreement") to reduce regulatory duplication for firms that are Dual Members by allocating certain regulatory responsibilities for selected NYSE rules from NYSE Regulation to FINRA. The Agreement includes a list of all of those rules ("Common Rules") for which FINRA has assumed examination, enforcement and surveillance responsibilities under the Agreement relating to compliance by Dual Members to the extent that such responsibilities involve member firm regulation. See Securities Exchange Act Release No. 56148 (July 26, 2007) 72 FR 42146 (August 1, 2007) (Notice of Filing and Order Approving and Declaring Effective a Plan for the Allocation of Regulatory Responsibilities). The Common Rules are the same NYSE rules that FINRA has incorporated into its rulebook. See Securities Exchange Act Release No. 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Incorporate Certain NYSE Rules Relating to Member Firm Conduct) (File No. SR-NASD-2007-054). Paragraph 2(b) of the Agreement sets forth procedures regarding proposed changes by either NYSE or FINRA to the substance of any of the Common Rules.

2(b), as recently approved by the Commission.<sup>7</sup>

###### 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,<sup>8</sup> which requires, among other things, that FINRA rules must 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 the proposed rule change serves to further the consolidation of the member firm regulation functions of NASD and NYSE Regulation.

##### 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. 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-2007-019 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 Number SR-FINRA-2007-019. This file number should be included on the subject line if e-mail is used. To help the

<sup>7</sup> See Release No. 34-56654, *supra* note 5. The Commission notes that, under the recent amendment to NYSE Rule 2(b), NYSE-only member organizations are provided a 60-day grace period within which they must apply for and be approved for FINRA membership.

<sup>8</sup> 15 U.S.C. 78o-3(b)(6).

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 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 available publicly. All submissions should refer to File Number SR-FINRA-2007-019 and should be submitted on or before December 5, 2007.

#### IV. Commission Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.<sup>9</sup> Specifically, the Commission believes that the proposed rule change is consistent with section 15A(b)(6) of the Act<sup>10</sup> in that it is 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.

The proposed rule change amends the version of NYSE Rule 2(b) that was incorporated into FINRA's rulebook as part of the consolidation of the member firm regulatory consolidation between NASD and NYSE. The Commission notes that the proposed rule change would make FINRA's NYSE Rule 2(b) identical to the version of NYSE Rule 2(b) in the NYSE rulebook that recently was amended and approved by the Commission.<sup>11</sup> In addition, the

<sup>9</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>10</sup> 15 U.S.C. 78o-3(b)(6).

<sup>11</sup> See Release No. 34-56654, *supra* note 5.

Commission believes that the proposed rule change comports with the provision of the 17d-2 Agreement, as approved by the Commission, in which FINRA and NYSE agreed to promptly propose conforming changes, absent a disagreement about the substance of a proposed rule change to one of the Common Rules, to ensure that such rules continue to be Common Rules under the Agreement. In this regard, the Commission believes that it is appropriate for the proposed rule to be effective retroactively as of October 12, 2007, which is the date NYSE's amendment to NYSE Rule 2(b) was approved by the Commission.<sup>12</sup>

The Commission finds good cause to approve the proposal prior to the thirtieth day after the proposal was published for comment in the **Federal Register**. This approval allows the proposed rule change to take effect without delay. The NYSE's proposed revision to NYSE Rule 2(b) was published for comment and approved by the Commission.<sup>13</sup> Therefore, interested persons were provided the opportunity to submit comments on rule text that is identical to FINRA's proposal. For this reason, the Commission finds good cause, consistent with section 19(b)(2) of the Act, to grant accelerated approval to the proposed rule change.

#### V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR-FINRA-2007-019) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-22161 Filed 11-13-07; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56752; File No. SR-NASD-2007-043]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc. (n/k/a Financial Industry Regulatory Authority, Inc. ("FINRA")); Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Amend NASD Rule 7001C To Increase Percentage of Market Data Revenue Shared With NASD/NSX TRF Participants

November 6, 2007.

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 June 29, 2007, 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, II and III below, which Items have been prepared by NASD. On October 29, 2007, Financial Industry Regulatory Authority, Inc. ("FINRA") filed Amendment No. 1 to the proposed rule change.<sup>3</sup> 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

FINRA proposes to amend NASD Rule 7001C (Securities Transaction Credit) to increase the percentage of New York Stock Exchange ("Tape A"), American Stock Exchange ("Tape B") and Nasdaq Exchange ("Tape C") revenue shared with FINRA members reporting trades to the NASD/NSX Trade Reporting Facility ("NASD/NSX TRF"). The text of the proposed rule change is available at FINRA, <http://www.finra.org>, and the Commission's Public Reference Room.

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

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

<sup>3</sup> Effective July 30, 2007, FINRA was formed through the consolidation of NASD and the member regulatory functions of NYSE Regulation. See Securities Exchange Act Release No. 56146 (July 26, 2007), 72 FR 42190 (August 1, 2007). Accordingly, the NASD/NSX TRF is now doing business as the FINRA/NSX TRF. The formal name change of each of FINRA's Trade Reporting Facilities is pending and once completed, FINRA will file a separate proposed rule change to reflect those changes in the Manual. In Amendment No. 1, FINRA made certain changes to the original proposed rule change of June 29, 2007, including to: (i) *Propose* to share 75%, rather than 100% as proposed in the original filing, of market data revenue with NASD/NSX TRF participants, and (ii) revise the Self-Regulatory Organization's Statement on Burden on Competition.