

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

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

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>12</sup> However, Rule 19b-4(f)(6)(iii)<sup>13</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Exchange notes that the proposal will allow the Exchange to continue receiving inbound routes of equities orders from Arca Securities, in a manner consistent with prior approvals and established protections, while also permitting the Exchange and the Commission to assess the impact of the pilot.<sup>14</sup> The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the pilot period to be extended without interruption through September 30, 2010. For this reason, the Commission designates the proposed rule change to be operative upon filing with the Commission.<sup>15</sup>

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2010-19 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-NYSEArca-2010-19. 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 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 the Exchange. 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-NYSEArca-2010-19 and should be submitted on or before April 27, 2010.

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

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-7696 Filed 4-5-10; 8:45 am]

BILLING CODE 8011-01-P

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-61806; File No. SR-FINRA-2010-013]

**Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify FINRA/Nasdaq Trade Reporting Securities Transaction Credit**

March 31, 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 26, 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 7610A (Securities Transaction Credit) to modify credits provided to members that use the FINRA/Nasdaq Trade Reporting Facility ("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.

<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).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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

<sup>14</sup> See *supra* note 9 and accompanying text.

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

**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"). In connection with the establishment of the FINRA/Nasdaq 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.

The FINRA/Nasdaq TRF receives revenue for transactions reported to the three tapes<sup>5</sup> from the Consolidated Tape Association and Nasdaq Securities Information Processor (the "Tapes"). Pursuant to Rule 7610A, FINRA members are provided with a fractional share of this revenue based on their "Market Share."<sup>6</sup> Market Share is calculated quarterly for each member based on the transactions attributed to them in each of the three Tapes. Rule 7610A provides four tiers of revenue share: 0%, 50%, 80% and 100%.

Eligibility for a tier is based on the percentage of Market Share, and the percentage of Market Share required increases as the tiers of revenue share increase. Currently, the amount of Market Share required to receive an allocation under each tier is different for each Tape. For example, to receive an 80% share of revenue, a member must have 0.15% but less than 0.25% of Market Share if reporting an NYSE security, 0.25% but less than 0.50% if reporting an Amex security, or 0.25% but less than 0.75% if reporting a Nasdaq security.

Proposed Amendments to Credit Schedule

NASDAQ OMX, as the FINRA/Nasdaq TRF Business Member, has determined to amend the Market Share percentages for revenue sharing eligibility applicable to Tapes A and B so that they are consistent with the current levels of Tape C. Accordingly, FINRA is proposing to amend Rule 7610A to reflect the new credit schedule. The following table provides a comparison of the old Market Share tier structure with the proposed new structure:

	Previous tier break point	New tier break point	Revenue share (percent)
Tape A Tier 1 .....	=>0.25% .....	=>0.75% .....	100
Tape A Tier 2 .....	<0.25%, =>0.15% .....	<0.75%, =>0.25% .....	80
Tape A Tier 3 .....	<0.15%, =>0.10% .....	<0.25%, =>0.10% .....	50
Tape A Tier 4 .....	<0.10% .....	<0.10% .....	0
Tape B Tier 1 .....	=>0.50% .....	=>0.75% .....	100
Tape B Tier 2 .....	<0.50%, =>0.25% .....	<0.75%, =>0.25% .....	80
Tape B Tier 3 .....	<0.25%, =>0.10% .....	<0.25%, =>0.10% .....	50
Tape B Tier 4 .....	<0.10% .....	<0.10% .....	0
Tape C Tier 1 .....	=>0.75% .....	=>0.75% .....	100
Tape C Tier 2 .....	<0.75%, =>0.25% .....	<0.75%, =>0.25% .....	80
Tape C Tier 3 .....	<0.25%, =>0.10% .....	<0.25%, =>0.10% .....	50
Tape C Tier 4 .....	<0.10% .....	<0.10% .....	0

The Business Member notes that the volume and distribution of Market Share among both Tapes A and B have matured so that they more closely resemble the Market Share distribution of Tape C. As such, the Business Member believes that it is appropriate to align the tier structure of Tapes A and B to that of Tape C.

The Business Member has advised FINRA that it believes that the proposed amended credit schedule more

equitably allocates the revenue share provided to members for their use of the FINRA/Nasdaq TRF. The proposed rule change will eliminate the differences in allocation, thus rewarding each member consistently for its use of the FINRA/Nasdaq TRF, irrespective of the Tape to which the transaction is reported.

Under the proposed credit schedule, the thresholds for receiving revenue share under the tiers of Tapes A and B have increased. As a consequence,

members that have historically qualified to receive revenue share from Tapes A and B may no longer qualify for the same tier, notwithstanding that they have achieved the same level of Market Share. The Business Member believes that this is an appropriate result of aligning Market Share with the revenues received from the Tapes for reporting those transactions.

FINRA has filed the proposed rule change for immediate effectiveness.

<sup>5</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>6</sup>Rule 7610A defines Market Share as a percentage calculated by dividing the total number of shares represented by trades reported by a FINRA member to the FINRA/Nasdaq TRF during a given

calendar quarter by the total number of shares represented by all trades reported to the Consolidated Tape Association or the Nasdaq Securities Information Processor, as applicable, during that quarter. Market Share is calculated separately for each tape.

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>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 amended credit schedule is fair and provides an equitable allocation of the credits provided to the FINRA/Nasdaq TRF in that it will apply uniformly to all FINRA members that use the FINRA/Nasdaq TRF.

### 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>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:

### 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-2010-013 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-2010-013. 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-2010-013 and should be submitted on or before April 27, 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. 2010-7694 Filed 4-5-10; 8:45 am]

**BILLING CODE 8011-01-P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Ex Parte No. 290 (Sub-No. 5) (2010-2)]

### Quarterly Rail Cost Adjustment Factor

**AGENCY:** Surface Transportation Board.

**ACTION:** Approval of rail cost adjustment factor.

**SUMMARY:** The Board has approved the second quarter 2010 Rail Cost Adjustment Factor (RCAF) and cost index filed by the Association of American Railroads. The second quarter 2010 RCAF (Unadjusted) is 1.060. The second quarter 2010 RCAF (Adjusted) is 0.477. The second quarter 2010 RCAF-5 is 0.452. As part of its March 30, 2010 submission, AAR asks the Board to "correct the productivity calculation for the period 2003-2007," and requests that the Board recalculate earlier RCAF (Adjusted) and RCAF-5 values that were determined with the 2003-2007 productivity adjustment factor. AAR's additional request will be considered in a separate proceeding.

**DATES:** *Effective Date:* April 1, 2010.

**FOR FURTHER INFORMATION CONTACT:** Pedro Ramirez, (202) 245-0333. (Federal Information Relay Service (FIRS) for the hearing impaired: 1-800-877-8339.)

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Board's decision, which is available on our Web site <http://www.stb.dot.gov>. Copies of the decision may be purchased by contacting the office of Public Assistance, Governmental Affairs, and Compliance at (202)-245-0235. Assistance for the hearing impaired is available through FIRS at 1-800-877-8339.

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: March 31, 2010.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Nottingham.

**Jeffrey Herzig,**  
Clearance Clerk.

[FR Doc. 2010-7684 Filed 4-5-10; 8:45 am]

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<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).

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