consistent with the purposes and requirements of Section 17A of the Act [3] because it is designed to promote the prompt and accurate clearance and settlement of transactions in securities options, to foster cooperation and coordination with persons engaged in the clearance and settlement of such transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of such transactions, and, in general, to protect investors and the public interest. OCC believes that the proposed rule change accomplishes these purposes by reducing the likelihood of a dispute as to the Commission's jurisdiction over cash-settled foreign currency options with an exercise price of one cent. OCC also states that the proposed rule change is not inconsistent with the By-Laws and Rules of OCC including those proposed to be amended.

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

OCC does not believe that the proposed rule change would impose any burden on competition.

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

OCC has not solicited or received written comments relating to the proposed rule change. OCC will notify the Commission of any written comments it receives.

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

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

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.

[3] 15 U.S.C. 78q–1.

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.* Please include File No. SR–OCC–2010–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–OCC–2010–05. 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 OCC's principal office and on OCC's Web site at *http://www.theocc.com/publications/rules/proposed_changes/proposed_changes.jspU.* 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–OCC–2010–05 and should be submitted on or before April 28, 2010.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[4]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–7844 Filed 4–6–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61819; File No. SR–FINRA–2009–061]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 2 to a Proposed Rule Change and Order Granting Accelerated Approval to the Proposed Rule Change, as Modified by Amendments Nos. 1 and 2 Thereto, To Require Members To Report OTC Transactions in Equity Securities Within 30 Seconds of Execution

March 31, 2010.

I. Introduction

On September 16, 2009, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to require members to report OTC transactions in equity securities within 30 seconds of execution. On October 30, 2009, FINRA filed Amendment No. 1 to the proposed rule change. The Commission published the proposed rule change, as amended, for comment in the **Federal Register** on November 17, 2009.[3] The Commission received two comment letters in response to the proposed rule change.[4] On March 22, 2010, FINRA responded to the comment letters and filed Amendment No. 2 to the proposed rule change.[5] This Commission is publishing this notice and order to solicit comments on Amendment No. 2 and to approve the proposed rule change, as

[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 60960 (November 6, 2009), 74 FR 59272 ("Notice").

[4] *See* Letters from James R. Downing, CCO, Cheevers and Company, Inc., received November 12, 2009 ("Cheevers Letter"); and Neal E. Nakagiri, President, CEO, and CCO, NPB Financial Group, LLC, dated November 24, 2009 ("NPB Letter").

[5] *See* Amendment No. 2 dated March 22, 2010 ("Amendment No. 2"). The text of the Amendment No. 2 is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA, and on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*).

modified by Amendments Nos. 1 and 2, on an accelerated basis.

II. Description of the Amended Proposal

FINRA proposed to amend its trade reporting rules to: (1) Require that members report over-the-counter ("OTC") equity transactions [6] to FINRA within 30 seconds of execution; (2) require that members report secondary market transactions in non-exchange-listed direct participation program ("DPP") [7] securities to FINRA within 30 seconds of execution; (3) require that members report trade cancellations that are subject to the 90-second reporting under current FINRA rules within 30 seconds of the time the trade is canceled; [8] and (4) make certain conforming changes to the rules relating to the OTC Reporting Facility ("ORF").

A. 30-Second Reporting Requirement

Under current FINRA trade reporting rules, members generally must report OTC equity transactions that are executed during the hours that the FINRA Facilities are open within 90 seconds of execution.[9] Last sale information for such trades is publicly disseminated on a real-time basis. For trades executed during normal market hours and canceled at or before 4:00 p.m. on the date of execution, members are required to report the cancelation of the trades within 90 seconds of cancellation.[10] There are certain limited exceptions to this general requirement, including for trades in non-exchange-listed DPP securities, as discussed below.[11]

FINRA proposed to amend the trade reporting rules to require that members report OTC equity transactions to FINRA within 30 seconds of execution. In addition, for trades executed during normal market hours and canceled at or before 4 p.m. on the date of execution, FINRA proposed to amend the trade reporting rules to require that members report cancellations within 30 seconds of cancellation.[12] Specifically, the trade reporting rules would be amended to replace the references to 90 seconds with 30 seconds.[13] Trades not reported within 30 seconds, unless expressly subject to a different reporting requirement or excluded from the trade reporting rules altogether, would be late.[14]

B. Reporting Requirements Applicable to Trades in Non-Exchange-Listed DPP Securities

Pursuant to current FINRA Rule 6643(a)(1), members are required to report trades in non-exchange-listed DPP securities to the ORF by 1:30 p.m. Eastern Time on the next business day (T+1) after the date of execution; members that have the operational capability to report transactions within 90 seconds of execution may do so at their option.[15] By contrast, OTC trades in exchange-listed DPP securities are reported to a TRF or the ADF and are subject to the 90-second reporting requirement (like any other OTC trade in an NMS stock).[16]

FINRA proposed to amend the trade reporting rules to require that transactions in non-exchange-listed DPP securities be reported within 30 seconds of execution to conform to the reporting requirements applicable to other OTC transactions, including OTC transactions in exchange-listed DPP securities. Specifically, FINRA proposed to delete the Rule 6640 Series (Reporting Transactions in Direct Participation Program Securities) in its entirety, so that secondary market transactions in non-exchange-listed DPPs would be reported to FINRA as any other OTC Equity Security pursuant to Rules 6622, 6623, 7310, and 7330 as proposed to be revised.[17] FINRA also proposed to make other changes necessary to implement the new reporting regime applicable to non-exchange listed DPP securities.[18]

C. Proposed Conforming Amendments

In addition to the changes described above, FINRA proposed certain changes to a number of subparagraphs within paragraph (a) of Rule 6622 relating to the ORF to conform, to the extent practicable, to the rules relating to the ADF and TRFs.[19]

In addition to the proposed amendments to Rule 6622, FINRA proposed to amend Rule 6420 to add "normal market hours" and "OTC Reporting Facility Participant" as defined terms.[20]

[6] Specifically, OTC equity transactions are: (1) Transactions in NMS stocks, as defined in SEC Rule 600(b) of Regulation NMS, effected otherwise than on an exchange, which are reported through the Alternative Display Facility ("ADF") or a Trade Reporting Facility ("TRF"); and (2) transactions in "OTC Equity Securities," as defined in FINRA Rule 6420 (*e.g.,* OTC Bulletin Board and Pink Sheets securities), which are reported through the OTC Reporting Facility ("ORF"). The ADF, TRFs and ORF are collectively referred to herein as the "FINRA Facilities."

[7] "Direct participation program or DPP, means a program which provides for flow-through tax consequences regardless of the structure of the legal entity or vehicle for distribution including, but not limited to, oil and gas programs, real estate programs, agricultural programs, cattle programs, condominium securities, Subchapter S corporate offerings and all other programs of a similar nature, regardless of the industry represented by the program, or any combination thereof. A program may be composed of one or more legal entities or programs but when used herein, the term shall mean each of the separate entities or programs making up the overall program and/or the overall program itself. Excluded from this definition are real estate investment trusts, tax qualified pension and profit sharing plans pursuant to Sections 401 and 403(a) of the Internal Revenue Code and individual retirement plans under Section 408 of that Code, tax sheltered annuities pursuant to the provisions of Section 403(b) of the Internal Revenue Code, and any company, including separate accounts, registered pursuant to the Investment Company Act of 1940." *See* FINRA Rule 6420, as proposed to be amended.

[8] *See* Amendment No. 2. *See also* Securities Exchange Act Release No. 61359 (January 14, 2010), 75 FR 3772 (January 22, 2010) (approving SR–FINRA–2009–082) ("Cancellations Order"). This new requirement would include trades executed during normal market hours and canceled at or before 4:00 p.m. on the date of execution. *See* FINRA Rules 6282(j), 6380A(g), 6380B(f) and 6622(f).

[9] *See, e.g.,* FINRA Rules 6282(a), 6380A(a), 6380B(a), and 6622(a).

[10] *See, e.g.,* FINRA Rules 6282(j), 6380A(g), 6380B(f) and 6622(f). *See also* Cancellations Order, *supra* note 8.

[11] Additionally, FINRA noted that transactions in PORTAL securities, as defined in FINRA Rule 6631, are not subject to the 90-second reporting requirement, but must be reported to the ORF by the end of the day. *See* FINRA Rule 6633.

[12] *See* note 8, *supra.*

[13] *See* FINRA Rules 6282(a) and (j); 6380A(a) and (g); 6380B(a) and (f); 6622(a) and (f); 7130(b); 7230A(b); 7230B(b); and 7330(b). FINRA also proposed to amend FINRA Rules 6181 and 6623 to replace the reference to 90 seconds with a more general reference to "the required time period" to clarify that these provisions also apply to trades that are subject to a different reporting requirement (*e.g.,* certain trades executed outside normal market hours).

[14] Although members would have 30 seconds to report, FINRA reiterated that—as is the case today—members must report trades as soon as practicable and cannot withhold trade reports, *e.g.,* by programming their systems to delay reporting until the last permissible second.

[15] Transaction information for such trades is not disseminated on a real-time trade-by-trade basis, but is included in end-of-day summary information.

[16] *See* FINRA Rules 6282(a), 6380A(a), and 6380B(a).

[17] *See* Section II.C below.

[18] For a detailed description of these changes *see* Notice, *supra* note 3, at 59273–59274. In the Notice, FINRA noted that transactions in non-exchange-listed DPPs currently are not subject to regulatory transaction fees because they are not subject to prompt last sale reporting under FINRA rules. As a result of the proposed rule change, transactions in non-exchange-listed DPPs would become subject to regulatory transaction fees. *See* Notice, at 59274.

[19] For a detailed description of these changes *see* Notice, *supra* note 3, at 59274. FINRA noted that most of the proposed conforming changes to FINRA Rule 6622(a) are technical in nature; however, some members may need to make systems changes to comply with some of the requirements that are not included expressly in the current rule.

[20] The proposed definition of "normal market hours" is identical to the TRF rules, and the proposed definition of "OTC Reporting Facility Participant" is substantially similar to the definition of "Trade Reporting Facility Participant" in the TRF rules. *See, e.g.,* FINRA Rules 6320A and 6320B.

III. Summary of Comment Letters and FINRA's Response

The Commission received two comment letters on the proposed rule change.[21]

A. 30-Second Reporting Requirement

One commenter raised the following issues related to the proposed 30-second reporting requirement.[22] First, the commenter pointed out that the proposal does not reflect the manual processes many firms have in place when reporting to a TRF, such as using WeblinkACT 2.0, a NASDAQ product which requires the user to type information into a browser based window in order to report transactions. According to the commenter, if the reporting time is changed to 30 seconds "it is plausible that firms using WeblinkACT would have difficulty reporting within 30 seconds."[23] The commenter stated that this places an undue burden on firms with processes that are manual in nature.[24]

In the original filing, FINRA proposed to implement the proposed rule change between six and nine months following the date of Commission approval. In responding to the first comment, FINRA recognized that firms that use a manual process such as WeblinkACT to report trades may have difficulty entering all of the required information within 30 seconds.[25] However, FINRA represented that the number of trades reported in this manner is a tiny fraction of the overall number of trades reported to FINRA on a daily basis, and that the number of firms that use this manual reporting process is small. Moreover, FINRA noted that there are steps that firms using WeblinkACT could take to expedite trade reporting, including, for example, setting defaults to automatically populate certain fields in the trade report or separating the process of reporting for tape purposes from any associated clearing entry (*i.e.,* the submission of additional clearing information may be the reason a firm cannot complete the reporting within 30 seconds). Accordingly, in Amendment No. 2, FINRA proposed to provide an additional six months for member firms that utilize manual trade reporting systems to make the systems changes necessary to comply with the 30-second trade reporting requirement [26]

Second, the commenter noted that the proposed rule change will not materially enhance market transparency and questioned the need for reducing the reporting time given that 99.90% of all trades are already being reported within 30 seconds.[27]

In responding to the second comment, FINRA stated that the original filing cited a number of compelling reasons for the proposed rule change. Additionally, FINRA noted that under the 90-second reporting requirement, market participants have no way of distinguishing among trades reported 30 or 60 or 90 seconds after execution; they all appear on the tape as timely reported trades.[28] FINRA stated that the proposed rule change would provide market participants the certainty that any trade disseminated as timely reported was executed within the previous 30 seconds.

Third, the commenter stated that Qualified Contingent (QCT) trades [29] should be exempt from the 30-second reporting requirement.[30] In responding to the comment, FINRA stated that such trades currently are subject to real-time trade reporting and dissemination, and FINRA does not believe that a blanket exemption is warranted in this instance.[31] FINRA noted, however, that if a firm reports QCT trades via a manual process such as WeblinkACT, it may qualify for the later Phase II implementation date, as discussed above, and have additional time to make necessary systems changes.[32]

Finally, the commenter recommended that FINRA adopt a rule that requires firms to report "as soon as practicable," rather than impose a 30-second reporting requirement, to afford firms with manual processes the ability to remain compliant and to require that automated processes are programmed to report promptly.[33] In responding to the comment, FINRA stated that a bright-line, uniform standard is crucial for surveillance and enforcement purposes, and provides meaningful information to the market.[34]

B. Reporting Requirements Applicable to Trades in Non-Exchange-Listed DPP Securities

The second commenter addressed the proposal relating to the trade reporting of transactions in non-exchange-listed DPPs.[35] The commenter asserted that a 30-second reporting requirement for non-exchange-listed DPPs would be problematic because the time of execution for such trades is not a precise time. The commenter asserted that "there is a lot of paperwork to complete before a 'trade' takes place between a buyer and a seller, and then the transfer itself has to be accepted and completed by the issuer or an agent of the issuer." [36] The commenter further asserted that "[i]f a trade report is required at all, it should be within 24 hours of the 'last act' that is required between the buyer, seller and issuer to ultimately complete the trade." [37]

In responding to the comment, FINRA stated that, as discussed in the original filing, pursuant to current Rule

[21] *See* note 4, *supra.*

[22] *See* Cheevers Letter, *supra* note 4.

[23] *Id.* at 1.

[24] *Id.*

[25] *See* Amendment No. 2, *supra* note 5.

[26] FINRA will phase-in implementation of the 30-second reporting requirement. The implementation date for "Manual Reporting Firms" would be between twelve and fifteen months following the date of Commission approval ("Phase II"). For purposes of Phase II implementation, FINRA defined a "Manual Reporting Firm" as a firm that uses a manual process such as WeblinkACT (or the Nasdaq or ACT workstation) for all, or substantially all, of its trade reporting of OTC trades. Firms with automated processes that on occasion manually report trades would not fall within the scope of this definition and must comply with the Phase I implementation date for all of their trade reporting. In other words, firms with automated trade reporting processes would not qualify for Phase I implementation for some trades and Phase II implementation for other trades. For a detailed description of the steps necessary to qualify as a Manual Reporting Firm, *see* Amendment No. 2, *supra* note 5. For all other firms, the implementation date would be between six and nine months following the date of Commission approval, as proposed in the original filing ("Phase I"). FINRA would announce the implementation dates in a *Regulatory Notice.* The proposed phased-in implementation schedule would apply to the 30-second reporting requirement only. The conforming changes to the rules relating to the ORF that were proposed in the original filing would be implemented for all firms on the Phase I implementation date. Prior to the Phase II implementation date, Manual Reporting Firms would continue to be subject to the current trade reporting requirements, *i.e.,* firms must report as promptly as practicable—and in no event more than 90 seconds—following trade execution. These firms also would continue to be subject to all other reporting time frames under FINRA rules. FINRA also stated that the proposed phased-in implementation schedule would not establish a separate standard for purposes of modifying trade reports as timely versus late. Upon Phase I implementation, all trades reported more than 30 seconds after execution will be modified as late for reporting and dissemination purposes.

[27] *See* Cheevers Letter at 1.

[28] *See* Amendment No. 2, *supra* note 5.

[29] *See* Securities Exchange Act Release No. 54389 (August 31, 2006), 71 FR 52829 (September 7, 2006) (Order Granting an Exemption for Qualified Contingent Trades from Rule 611(a) of Regulation NMS under the Securities Exchange Act of 1934); and Securities Exchange Act Release No. 57620 (April 4, 2008), 73 FR 19271 (April 9, 2008) (Order Modifying the Exemption for Qualified Contingent Trades from Rule 611(a) of Regulation NMS under the Securities Exchange Act of 1934).

[30] *See* Cheevers Letter at 2. The commenter noted that such orders are not exposed to the open marketplace and the reported prices are not indicative of the current available market for the security, therefore their increased timeliness adds little to the transparency of the actionable market.

[31] *See* Amendment No. 2, *supra* note 5.

[32] *Id.*

[33] *See* Cheevers Letter at 2–3.

[34] *See* Amendment No. 2, *supra* note 5.

[35] *See* NPB Letter, *supra* note 4.

[36] *See* NPB Letter at 1.

[37] *Id.*

6643(a)(1), members are required to report trades in non-exchange-listed DPP securities to the ORF by 1:30 p.m. Eastern Time on the next business day (T+1) after the date of execution; members that have the operational capability to report transactions within 90 seconds of execution may do so at their option.[38] The original filing proposed to amend Rule 6622 to include as Supplementary Material the definitions of "date of execution" and "time of execution" for non-exchange-listed DPP transactions.[39] Thus, FINRA stated that under current rules and the proposed rule change, there is no uncertainty as to the time of execution of the trade or the point at which a firm's reporting obligation is triggered. With respect to the commenter's suggestion that a trade report should be required (if at all) within 24 hours of the 'last act' that is required between the buyer, seller and issuer to ultimately complete the trade, FINRA reiterated that under its trade reporting rules, the reporting obligation is triggered upon execution, not settlement, of the trade and the fact that the ultimate transfer of the securities may be contingent on subsequent events or actions of other parties is irrelevant.[40]

IV. Discussion and Commission Findings

After carefully considering the proposal, the comments submitted, and FINRA's response to the comments, 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 association.[41] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[42] which requires, among other things, that FINRA 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. The Commission has considered the commenters' view on the proposed rule change and believes that FINRA responded appropriately to the concerns raised. Indeed, the Commission believes that the proposal promotes the goals of transparency, consistency in trade reporting and dissemination, and timely reporting by FINRA members.

Furthermore, the Commission believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[43] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations and transactions in securities. The Commission believes that these goals are furthered by the proposed amendments requiring that FINRA members report OTC equity transactions to FINRA within 30 seconds of execution; requiring that members report trade cancellations within 30 seconds of the time the trade is canceled; requiring that members report secondary market transactions in non-exchange-listed DPP securities to FINRA within 30 seconds of execution; and making certain conforming changes to the rules relating to the ORF. The proposed rule change is reasonably designed to accomplish these goals by shortening the time within which FINRA members must report trades from 90 seconds to 30 seconds. As FINRA stated in its proposal, the 90-second reporting requirement has been in effect since 1982, when OTC trading was "more manual in nature." The regulatory landscape has changed substantially in the intervening 28 years and, as trading has become increasingly automated, the vast majority of trades are now reported in a much shorter period of time.[44]

The Commission shares FINRA's belief that the proposed rule change will promote consistent and timely reporting by all members and enhance market transparency and price discovery by ensuring that trades are disseminated closer in time to execution. As FINRA stated in submitting its proposal, timely reporting has become even more critical with the implementation of Regulation NMS. Additionally, the proposed rule change will lessen the ability of members to withhold important market information from investors and other market participants for competitive or other improper reasons.[45] Going forward, the Commission expects FINRA to monitor the effect of this change and to consider the need to lower the time within which trades must be reported even further.

However, one commenter asserted that the proposal places an undue burden on firms with processes that are manual in nature.[46] In response to this comment, in Amendment No. 2, FINRA proposed to provide an additional six months for member firms that utilize manual trade reporting systems to make the systems changes necessary to comply with the 30-second trade reporting requirement.[47]

With respect to FINRA's proposal to amend the trade reporting rules to require that transactions in non-exchange-listed DPP securities be reported within 30 seconds to conform to the reporting requirements applicable to other OTC transactions, including those in exchange-listed DPP securities, the Commission shares FINRA's belief that the inconsistency in the reporting and dissemination of DPPs can create confusion for market participants, especially when an exchange-listed DPP is delisted and dissemination of trading in the security goes from real-time to only twice daily. Therefore, the Commission believes that there is a value in such uniform reporting for DPP securities.

In its filing with the Commission, FINRA stated its belief that the proposed rule change would enhance market transparency and promote consistency in trade reporting and dissemination and that increasing the public availability of information would allow FINRA to obtain a more complete audit trail of transactions in the market and enhance FINRA's ability to oversee its members' compliance with Regulation NMS. Although the Commission acknowledges the potential for firms covered by these new reporting requirements to incur additional compliance burdens and costs, the Commission believes that any such burdens are outweighed by the overall

[38] *See* Notice, *supra* note 3, at 59273.

[39] FINRA stated that the proposed definitions are identical to the definitions in current Rule 6642, and specifically, "time of execution" is defined as the time when the parties to a transaction in a DPP have agreed to all of the essential terms of the transaction, including the price and number of the units to be traded. *See* Amendment No. 2, *supra* note 5.

[40] *See* Amendment No. 2, *supra* note 5. Moreover, FINRA noted that delaying the trade report until a later date when the transfer actually occurs could be confusing to market participants, because intervening events, such as the payment of a distribution or sale of partnership assets, could affect the price or value of the DPP. *See id.*

[41] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[42] 15 U.S.C. 78o–3(b)(6).

[43] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[44] For example, FINRA noted that during the period of February 23 through February 27, 2009, overall member compliance with the current 90-second reporting requirement was 99.95% (for all trades submitted to a FINRA Facility for public dissemination), and 99.90% of trades were reported in 30 seconds or less. *See* Notice, *supra* note 3.

[45] FINRA reiterated the importance of timely reporting and reminds members that a pattern and practice of late reporting may be considered inconsistent with high standards of commercial honor and just and equitable principles of trade in violation of FINRA Rule 2010. *See* Notice, *supra* note 3.

[46] *See* note 24, *supra,* and accompanying text.

[47] *See* notes 25–26, *supra,* and accompanying text.

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,[48] 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).[49] 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).[50]

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.* 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.[51] 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.[52]

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 ("Act")[1] and Rule 19b–4 thereunder,[2] 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[3] and Rule 19b–4(f)(2) thereunder,[4] 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

[48] 15 U.S.C. 78s(b)(2).

[49] The requirement to report cancellations in 90 seconds was established by SR–FINRA–2009–082. *See* Cancellations Order, *supra* note 8.

[50] *See* Cancellations Order, *supra* note 8.

[51] 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.

[52] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).