

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57299; File No. SR-FINRA-2008-004]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish a Fee for the Submission of Non-Media Reports to the NASD/NSX Trade Reporting Facility

February 8, 2008.

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 February 6, 2008, Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a 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 substantially by FINRA. FINRA has designated this proposal as one establishing or changing a member due, fee, or other charge imposed by Nasdaq 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 filing with 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 establish a fee for the submission of non-media reports to the NASD/NSX Trade Reporting Facility (the “NASD/NSX TRF”).<sup>5</sup> The text of the proposed rule change is available at [www.finra.org](http://www.finra.org), the principal

offices of FINRA, and 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

On November 6, 2006, the Commission approved the establishment of the NASD/NSX TRF,<sup>6</sup> and on November 27, 2006, the NASD/NSX TRF commenced operation. The NASD/NSX TRF provides FINRA members with another mechanism for reporting locked-in transactions in NMS stocks, as defined in Rule 600(b)(47) of Regulation NMS under the Act,<sup>7</sup> effected otherwise than on an exchange.

In connection with the establishment of the NASD/NSX TRF, FINRA and National Stock Exchange, Inc. (“NSX”) entered into a Limited Liability Company Agreement for NASD/NSX Trade Reporting Facility LLC (the “NASD/NSX TRF LLC Agreement”), a copy of which appears in the NASD Manual. Under the NASD/NSX TRF LLC Agreement, FINRA, the “SRO Member,” has sole regulatory responsibility for the NASD/NSX TRF. NSX, the “Business Member,” is primarily responsible for the management of the NASD/NSX TRF’s business affairs, including establishing pricing for use of the NASD/NSX 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 NASD/NSX TRF.

FINRA members can submit to the NASD/NSX TRF “media” reports (*i.e.*, trade reports that are publicly

disseminated by the Securities Information Processors (“SIPs”)) and “non-media” reports (*i.e.*, reports that are submitted not for publication by the SIPs, but solely for clearing and/or regulatory purposes). Because FINRA uses all reports submitted, whether media or non-media, in conducting its regulatory and oversight functions, the NASD/NSX TRF is charged regulatory costs by FINRA based on all such reports that are submitted to the NASD/NSX TRF. However, market data revenue generated for NASD/NSX TRF activity is derived solely from media reports submitted and, as provided in NASD Rule 7002C, no other fees currently apply to the use of the NASD/NSX TRF. Thus, NSX, as the Business Member, believes that members should be charged a fee for submission of non-media reports that would serve to offset directly its regulatory costs associated with non-media reports.

##### Proposed Fee for Submission of Non-Media Reports

Accordingly, FINRA is proposing to adopt new NASD Rule 7003C to establish a fee for the submission of non-media reports to the NASD/NSX TRF. Specifically, under the proposed Rule, at the end of each billing cycle, a FINRA member will be charged a fee in the amount of \$.0075 for each non-media report that the member submitted to the NASD/NSX TRF during that billing cycle. For purposes of the proposed Rule, a non-media report is any report submitted by the member to the NASD/NSX TRF that is not submitted by the NASD/NSX TRF to the Consolidated Tape Association or the Nasdaq Securities Information Processor.

NSX, as the Business Member, has determined that the proposed fee of \$.0075 per report best approximates its regulatory costs associated with non-media reports submitted to the NASD/NSX TRF and is necessary for competitive reasons. NSX believes that the ability to offset such regulatory costs is crucial to the business of the NASD/NSX TRF and will keep the NASD/NSX TRF’s prices competitive.

Additionally, FINRA is proposing a technical amendment to NASD Rule 7002C to clarify that there will be no charge for use of the NASD/NSX TRF, except as otherwise provided in the Rule 7000C Series (Charges for NASD/NSX Trade Reporting Facility Services). This technical amendment is necessary to avoid any potential confusion between Rule 7002C and proposed Rule 7003C.

<sup>14</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>5</sup> Effective July 30, 2007, FINRA was formed through the consolidation of NASD and the member regulatory functions of NYSE Regulation. Accordingly, the NASD/NSX TRF is now doing business as the FINRA/NSX TRF. The formal name change of each Trade Reporting Facility is pending and once completed, FINRA will file a separate proposed rule change to reflect those changes in the Manual.

<sup>6</sup> See Securities Exchange Act Release No. 54715 (November 6, 2006), 71 FR 66354 (November 14, 2006) (SR-NASD-2006-108).

<sup>7</sup> 17 CFR 242.600(b)(47).

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

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>8</sup> in general, and with Section 15A(b)(5) of the Act,<sup>9</sup> in particular, 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 rule change is a reasonable fee structure in that it will be applied uniformly to all FINRA members that submit non-media reports to the NASD/NSX 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

Written comments were neither solicited nor received.

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

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>10</sup> and Rule 19b-4(f)(2)<sup>11</sup> thereunder, because it establishes or changes a due, fee, or other charge imposed on members by FINRA. Accordingly, the proposal is effective upon filing with the Commission. 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-2008-004 on the subject line.

### Paper Comments

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

All submissions should refer to File Number SR-FINRA-2008-004. 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, 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-2008-004 and should be submitted on or before March 7, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57305; File No. SR-NYSE-2007-119]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change Relating to the Adoption of New Exchange Rule 309 (Failure To Pay Fees)

February 11, 2008.

## I. Introduction

On December 21, 2007, the New York Stock Exchange LLC ("NYSE") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to adopt new Exchange Rule 309, which delineates procedures for the collection of fee arrearages due to the Exchange. The proposed rule change was published for comment in the **Federal Register** on January 7, 2008.<sup>3</sup> The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

## II. Description of the Proposal

The Exchange has proposed to establish new procedures to address members, member organizations, and allied members who fail to pay "fee[s] or any other sums due to the Exchange."<sup>4</sup> Types of payments that the Exchange would consider to be a "fee" under proposed Rule 309 include, but are not limited to, regulatory fees (*i.e.*, Gross Financial and Operational Combined Uniform Single Report (FOCUS) revenue fees and trading floor regulatory fees), trading license fees, and transaction charges. Types of payments that the Exchange would consider to be covered by the term "any other sums" include, but are not limited to, charges for using Exchange Floor

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

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

<sup>3</sup> See Securities Exchange Act Release No. 57065 (December 28, 2007), 73 FR 1248 ("Notice").

<sup>4</sup> See proposed Rule 309. Currently, Exchange Rule 476(k) sets forth the procedures for addressing the failure of members, member organizations, or allied members to pay "a fine, or any other sums due to the Exchange." Rule 476(k) provides that upon written notice to such members, member organizations, or allied members and notification of the Chairman of the Board of Directors of the Exchange of the arrearage, the Board of Directors may suspend the member, member organization, or allied member for failure to pay the arrearages due the Exchange until payment is made.

<sup>8</sup> 15 U.S.C. 78o-3.

<sup>9</sup> 15 U.S.C. 78o-3(b)(5).

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

<sup>11</sup> 17 CFR 240.19b-4(f)(2).