

OMB APPROVAL

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. SR - 2008 - 060

Amendment No.

Proposed Rule Change by Financial Industry Regulatory Authority
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial ☒	Amendment ☐	Withdrawal ☐	Section 19(b)(2) ☐	Section 19(b)(3)(A) ☒	Section 19(b)(3)(B) ☐
			Rule		
Pilot ☐	Extension of Time Period for Commission Action ☐	Date Expires 	☐ 19b-4(f)(1)	☐ 19b-4(f)(4)	
			☐ 19b-4(f)(2)	☐ 19b-4(f)(5)	
			☐ 19b-4(f)(3)	☒ 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document



Exhibit 3 Sent As Paper Document

**Description**

Provide a brief description of the proposed rule change (limit 250 characters).

Proposed Rule Change Relating to Trade Reporting Transfers of Securities Pursuant to an Asset Purchase Agreement

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name Last Name
Title
E-mail
Telephone Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date By
(Name)

Vice President and Director of Capital Markets Policy

(Title)

NOTE: Clicking the button at right will digitally sign and lock
this form. A digital signature is as legally binding as a physical
signature, and once signed, this form cannot be changed.

Stephanie Dumont,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

Form 19b-4 Information

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

Add Remove View

Exhibit Sent As Paper Document

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

Exhibit Sent As Paper Document

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

Add Remove View

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend FINRA trade reporting rules to codify the circumstances under which transfers of securities made pursuant to an asset purchase agreement are not subject to the reporting requirements applicable to over-the-counter transactions in debt and equity securities.

The text of the proposed rule change is attached as Exhibit 5.²

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change has been approved by the General Counsel of FINRA (or his officer designee) pursuant to delegated authority. No other action by FINRA is necessary for the filing of the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² On September 25, 2008, the SEC approved proposed rule change SR-FINRA-2008-021, which adopts the NASD Marketplace Rules (the NASD Rule 4000 through 7000 Series) as the FINRA Rule 6000 through 7000 Series in the Consolidated FINRA Rulebook. See Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (Order Approving SR-FINRA-2008-021; SR-FINRA-2008-022; SR-FINRA-2008-026; SR-FINRA-2008-028; and SR-FINRA-2008-029). SR-FINRA-2008-021 will be implemented on December 15, 2008. See Regulatory Notice 08-57 (October 2008). Because the proposed rule change will be operative after December 15, 2008, Exhibit 5 to this filing proposes amendments to the FINRA rules.

FINRA has filed the proposed rule change for immediate effectiveness. The operative date of the proposed rule change will be 30 days after the date of filing.

3. **Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

(a) Purpose

FINRA trade reporting rules require that over-the-counter transactions in debt and equity securities be reported to FINRA unless they qualify for an express exception under the rules.³ FINRA is proposing to amend the trade reporting rules to clarify that in the limited circumstance where securities are transferred pursuant to an asset purchase agreement ("APA"), such transfer does not have to be reported if (1) the APA is subject to the jurisdiction and approval of a court of competent jurisdiction in insolvency matters; and (2) the purchase price under the APA is not based on, and cannot be adjusted to reflect, the current market prices of the securities on or following the effective date of the APA.⁴

FINRA believes that transfers effected pursuant to an APA under these circumstances are not trade reportable events and that reporting and dissemination of

³ See FINRA Rules 6282 (formerly NASD Rule 4632A); 6380A (formerly NASD Rule 4632); 6380B (formerly NASD Rule 4632C); 6380C (formerly NASD Rule 4632E); 6622 (formerly NASD Rule 6620); 6633 (formerly NASD Rule 6732); 6643 (formerly NASD Rule 6920); and 6730 (formerly NASD Rule 6230).

⁴ Generally, an APA addresses both the assets and liabilities to be transferred, which include both securities and non-securities assets and liabilities. In such instance, the purchase price under the APA would not be based solely on the securities positions, but on the basket of assets and liabilities as a whole. FINRA notes that where securities are the only asset being transferred pursuant to an APA, such transfer may nonetheless qualify under the proposed rule change where the APA is approved by the court and the purchase price is not based on current or future market prices.

these transfers would not provide meaningful price discovery information to the market. By contrast, a transfer of securities pursuant to an APA where the terms of the APA dictate that the securities be transferred based on market prices that are current either on or following the effective date of the APA would be subject to the trade reporting rules. Thus, for example, if under the terms of the APA, the purchase price can be adjusted based on a change in the market price of the securities between the agreement date and the transfer date, the transfer of securities would be required to be reported.

Additionally, FINRA is proposing technical, non-substantive amendments to reorganize certain of the trade reporting rules to clarify that, as is the case today, the transactions and transfers enumerated in new subparagraph (1) of the Rules are not to be reported to FINRA, while the transactions enumerated in new subparagraph (2) of the Rules are not to be reported to FINRA for publication purposes, but must be reported for regulatory transaction fee assessment purposes.⁵

FINRA rules have never required members to report the transactions enumerated in new subparagraph (1) (e.g., transactions reported on or through an exchange) to FINRA for either publication or regulatory purposes. By contrast, members historically have been required to report the transactions enumerated in new subparagraph (2) (i.e., away from the market sales and transactions effected upon the exercise of an over-the-counter option) to FINRA for purposes of regulatory transaction fees under Section 3 of Schedule A to the By-Laws (“Section 3”). Prior to 2006, these transactions were reported manually and not through one of FINRA’s automated reporting facilities. In

⁵ See FINRA Rules 6282(i) (formerly NASD Rule 4632A); 6380A(e) (formerly NASD Rule 4632); 6380B(e) (formerly NASD Rule 4632C); 6380C(e) (formerly NASD Rule 4632E); and 6622(e) (formerly NASD Rule 6620).

2006, FINRA amended its rules and bylaws to require members to report on an automated basis all transactions that are subject to a regulatory transaction fee, but did not explicitly distinguish the two categories of transactions (i.e., transactions that do not get reported to FINRA at all and transactions that do not get reported for publication purposes, but do get reported for regulatory transaction fee assessment purposes) within the exceptions to the trade reporting rules.⁶ The technical amendments that FINRA is proposing herein merely seek to clarify that distinction. They will not change members' reporting obligations or limit the transaction-related information that FINRA receives.

As noted in Item 2 of this filing, FINRA has filed the proposed rule change for immediate effectiveness. The operative date of the proposed rule change will be 30 days after the date of filing.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁷ 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 will clarify members' trade reporting obligations and enhance market transparency.

⁶ See Securities Exchange Act Release No. 53977 (June 12, 2006), 71 FR 34976 (June 16, 2006) (order approving SR-NASD-2006-055).

⁷ 15 U.S.C. 78o-3(b)(6).

4. 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.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act⁸ and paragraph (f)(6) of Rule 19b-4 thereunder,⁹ in that the proposed rule change does not significantly affect the protection of investors or the public interest; does not impose any significant burden on competition; and does not become operative for 30 days after filing. In accordance with Rule 19b-4,¹⁰ FINRA submitted 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.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ 17 CFR 240.19b-4.

9. Exhibits

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

Exhibit 5. Text of proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-FINRA-2008-060)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Trade Reporting Transfers of Securities Pursuant to an Asset Purchase Agreement

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 , 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, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) 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 trade reporting rules to codify the circumstances under which transfers of securities made pursuant to an asset purchase agreement are not subject to the reporting requirements applicable to over-the-counter

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

transactions in debt and equity securities.

The text of the proposed rule change is attached as Exhibit 5.⁵

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

FINRA trade reporting rules require that over-the-counter transactions in debt and equity securities be reported to FINRA unless they qualify for an express exception under the rules.⁶ FINRA is proposing to amend the trade reporting rules to clarify that in the limited circumstance where securities are transferred pursuant to an asset purchase

⁵ On September 25, 2008, the SEC approved proposed rule change SR-FINRA-2008-021, which adopts the NASD Marketplace Rules (the NASD Rule 4000 through 7000 Series) as the FINRA Rule 6000 through 7000 Series in the Consolidated FINRA Rulebook. See Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (Order Approving SR-FINRA-2008-021; SR-FINRA-2008-022; SR-FINRA-2008-026; SR-FINRA-2008-028; and SR-FINRA-2008-029). SR-FINRA-2008-021 will be implemented on December 15, 2008. See Regulatory Notice 08-57 (October 2008). Because the proposed rule change will be operative after December 15, 2008, Exhibit 5 to this filing proposes amendments to the FINRA rules.

⁶ See FINRA Rules 6282 (formerly NASD Rule 4632A); 6380A (formerly NASD Rule 4632); 6380B (formerly NASD Rule 4632C); 6380C (formerly NASD Rule 4632E); 6622 (formerly NASD Rule 6620); 6633 (formerly NASD Rule 6732); 6643 (formerly NASD Rule 6920); and 6730 (formerly NASD Rule 6230).

agreement (“APA”), such transfer does not have to be reported if (1) the APA is subject to the jurisdiction and approval of a court of competent jurisdiction in insolvency matters; and (2) the purchase price under the APA is not based on, and cannot be adjusted to reflect, the current market prices of the securities on or following the effective date of the APA.⁷

FINRA believes that transfers effected pursuant to an APA under these circumstances are not trade reportable events and that reporting and dissemination of these transfers would not provide meaningful price discovery information to the market. By contrast, a transfer of securities pursuant to an APA where the terms of the APA dictate that the securities be transferred based on market prices that are current either on or following the effective date of the APA would be subject to the trade reporting rules. Thus, for example, if under the terms of the APA, the purchase price can be adjusted based on a change in the market price of the securities between the agreement date and the transfer date, the transfer of securities would be required to be reported.

Additionally, FINRA is proposing technical, non-substantive amendments to reorganize certain of the trade reporting rules to clarify that, as is the case today, the transactions and transfers enumerated in new subparagraph (1) of the Rules are not to be reported to FINRA, while the transactions enumerated in new subparagraph (2) of the

⁷ Generally, an APA addresses both the assets and liabilities to be transferred, which include both securities and non-securities assets and liabilities. In such instance, the purchase price under the APA would not be based solely on the securities positions, but on the basket of assets and liabilities as a whole. FINRA notes that where securities are the only asset being transferred pursuant to an APA, such transfer may nonetheless qualify under the proposed rule change where the APA is approved by the court and the purchase price is not based on current or future market prices.

Rules are not to be reported to FINRA for publication purposes, but must be reported for regulatory transaction fee assessment purposes.⁸

FINRA rules have never required members to report the transactions enumerated in new subparagraph (1) (e.g., transactions reported on or through an exchange) to FINRA for either publication or regulatory purposes. By contrast, members historically have been required to report the transactions enumerated in new subparagraph (2) (i.e., away from the market sales and transactions effected upon the exercise of an over-the-counter option) to FINRA for purposes of regulatory transaction fees under Section 3 of Schedule A to the By-Laws (“Section 3”). Prior to 2006, these transactions were reported manually and not through one of FINRA’s automated reporting facilities. In 2006, FINRA amended its rules and bylaws to require members to report on an automated basis all transactions that are subject to a regulatory transaction fee, but did not explicitly distinguish the two categories of transactions (i.e., transactions that do not get reported to FINRA at all and transactions that do not get reported for publication purposes, but do get reported for regulatory transaction fee assessment purposes) within the exceptions to the trade reporting rules.⁹ The technical amendments that FINRA is proposing herein merely seek to clarify that distinction. They will not change members’ reporting obligations or limit the transaction-related information that FINRA receives.

FINRA has filed the proposed rule change for immediate effectiveness. The operative date of the proposed rule change will be 30 days after the date of filing.

⁸ See FINRA Rules 6282(i) (formerly NASD Rule 4632A); 6380A(e) (formerly NASD Rule 4632); 6380B(e) (formerly NASD Rule 4632C); 6380C(e) (formerly NASD Rule 4632E); and 6622(e) (formerly NASD Rule 6620).

⁹ See Securities Exchange Act Release No. 53977 (June 12, 2006), 71 FR 34976 (June 16, 2006) (order approving SR-NASD-2006-055).

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁰ 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 will clarify members' trade reporting obligations and enhance market transparency.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹² In accordance

¹⁰ 15 U.S.C. 78o-3(b)(6).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

with Rule 19b-4,¹³ FINRA submitted 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.

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. Please include File Number SR-FINRA-2008-060 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Florence Harmon, Acting Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2008-060. This file number should be included on the subject line if e-mail is used. To help the Commission process

¹³ 17 CFR 240.19b-4.

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-2008-060 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Florence Harmon
Acting Secretary

¹⁴ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Exhibit 5 shows the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.¹

* * * * *

6200. ALTERNATIVE DISPLAY FACILITY

* * * * *

6282. Transactions Reported by Members to TRACS

(a) through (h) No Change.

(i) [Transactions Not To Be Reported To FINRA For Publication Purposes]

Reporting Requirements For Certain Transactions and Transfers of Securities

(1) The following [types of transactions effected by FINRA members] shall not be reported to TRACS [for publication purposes]:

 ([1]A) transactions that are part of a primary distribution by an issuer or of a registered secondary distribution (other than “shelf distributions”) or of an unregistered secondary distribution;

 ([2]B) transactions made in reliance on Section 4(2) of the Securities Act;

¹ On September 25, 2008, the SEC approved proposed rule change SR-FINRA-2008-021, which adopts the NASD Marketplace Rules (the NASD Rule 4000 through 7000 Series) as the FINRA Rule 6000 through 7000 Series in the Consolidated FINRA Rulebook. See Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (Order Approving SR-FINRA-2008-021; SR-FINRA-2008-022; SR-FINRA-2008-026; SR-FINRA-2008-028; and SR-FINRA-2008-029). SR-FINRA-2008-021 will be implemented on December 15, 2008. See Regulatory Notice 08-57 (October 2008). This Exhibit 5 reflects the underlying text of the FINRA Rules as adopted pursuant to SR-FINRA-2008-021.

[(3) transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security, e.g., to enable the seller to make a gift;]

[(4) purchases or sales of securities effected upon the exercise of an option pursuant to the terms thereof or the exercise of any other right to acquire securities at a pre-established consideration unrelated to the current market;]

[(5)C] transactions reported on or through an exchange;

[(6)D] the acquisition of securities by a member as principal in anticipation of making an immediate exchange distribution or exchange offering on an exchange; [and]

[(7)E] purchases of securities off the floor of an exchange pursuant to a tender offer[.]; and

(F) transfers of securities made pursuant to an asset purchase agreement (APA) that is subject to the jurisdiction and approval of a court of competent jurisdiction in insolvency matters, provided that the purchase price under the APA is not based on, and cannot be adjusted to reflect, the current market prices of the securities on or following the effective date of the APA.

(2) The following shall not be reported to TRACS for publication purposes, but shall be reported for regulatory transaction fee assessment purposes under Rule 7130(c):

(A) transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security, e.g., to enable the seller to make a gift; and

(B) purchases or sales of securities effected upon the exercise of an option pursuant to the terms thereof or the exercise of any other right to acquire securities at a pre-established consideration unrelated to the current market.

(j) No Change.

6300. TRADE REPORTING FACILITIES

6300A. FINRA/NASDAQ TRADE REPORTING FACILITY

* * * * *

6380A. Transaction Reporting

(a) through (d) No Change.

(e) [Transactions Not To Be Reported For Publication Purposes] Reporting Requirements For Certain Transactions and Transfers of Securities

(1) The following [types of transactions] shall not be reported to the FINRA/Nasdaq Trade Reporting Facility [for publication purposes]:

 ([1]A) transactions that are part of a primary distribution by an issuer or of a registered secondary distribution (other than “shelf distributions”) or of an unregistered secondary distribution;

 ([2]B) transactions made in reliance on Section 4(2) of the Securities Act;

[(3) transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security, e.g., to enable the seller to make a gift;]

[(4) purchases or sales of securities effected upon the exercise of an option pursuant to the terms thereof or the exercise of any other right to acquire securities at a pre-established consideration unrelated to the current market;]

[(5)C] transactions reported on or through an exchange;

[(6)D] the acquisition of securities by a member as principal in anticipation of making an immediate exchange distribution or exchange offering on an exchange; [and]

[(7)E] purchases of securities off the floor of an exchange pursuant to a tender offer[.]; and

(F) transfers of securities made pursuant to an asset purchase agreement (APA) that is subject to the jurisdiction and approval of a court of competent jurisdiction in insolvency matters, provided that the purchase price under the APA is not based on, and cannot be adjusted to reflect, the current market prices of the securities on or following the effective date of the APA.

(2) The following shall not be reported to the FINRA/Nasdaq Trade Reporting Facility for publication purposes, but shall be reported for regulatory transaction fee assessment purposes under Rule 7230A(g):

(A) transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security, e.g., to enable the seller to make a gift; and

(B) purchases or sales of securities effected upon the exercise of an option pursuant to the terms thereof or the exercise of any other right to acquire securities at a pre-established consideration unrelated to the current market.

(f) through (h) No Change.

6300B. FINRA/NSX TRADE REPORTING FACILITY

* * * * *

6380B. Transaction Reporting

(a) through (d) No Change.

(e) [Transactions Not To Be Reported For Publication Purposes] Reporting Requirements For Certain Transactions and Transfers of Securities

(1) The following [types of transactions] shall not be reported to the FINRA/NSX Trade Reporting Facility [for publication purposes]:

 ([1]A) transactions that are part of a primary distribution by an issuer or of a registered secondary distribution (other than “shelf distributions”) or of an unregistered secondary distribution;

 ([2]B) transactions made in reliance on Section 4(2) of the Securities Act;

[(3) transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security, e.g., to enable the seller to make a gift;]

[(4) purchases or sales of securities effected upon the exercise of an option pursuant to the terms thereof or the exercise of any other right to acquire securities at a pre-established consideration unrelated to the current market;]

[(5)C] transactions reported on or through an exchange;

[(6)D] the acquisition of securities by a member as principal in anticipation of making an immediate exchange distribution or exchange offering on an exchange; [and]

[(7)E] purchases of securities off the floor of an exchange pursuant to a tender offer[.]; and

(F) transfers of securities made pursuant to an asset purchase agreement (APA) that is subject to the jurisdiction and approval of a court of competent jurisdiction in insolvency matters, provided that the purchase price under the APA is not based on, and cannot be adjusted to reflect, the current market prices of the securities on or following the effective date of the APA.

(2) The following shall not be reported to the FINRA/NSX Trade Reporting Facility for publication purposes, but shall be reported for regulatory transaction fee assessment purposes under Rule 7230B(f):

(A) transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security, e.g., to enable the seller to make a gift; and

(B) purchases or sales of securities effected upon the exercise of an option pursuant to the terms thereof or the exercise of any other right to acquire securities at a pre-established consideration unrelated to the current market.

(f) through (h) No Change.

6300C. FINRA/NYSE TRADE REPORTING FACILITY

* * * * *

6380C. Transaction Reporting

(a) through (d) No Change.

(e) [Transactions Not To Be Reported For Publication Purposes] Reporting Requirements For Certain Transactions and Transfers of Securities

(1) The following [types of transactions] shall not be reported to the FINRA/NYSE Trade Reporting Facility [for publication purposes]:

[(1)A] transactions that are part of a primary distribution by an issuer or of a registered secondary distribution (other than “shelf distributions”) or of an unregistered secondary distribution;

[(2)B] transactions made in reliance on Section 4(2) of the Securities Act;

[(3) transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security, e.g., to enable the seller to make a gift;]

[(4) purchases or sales of securities effected upon the exercise of an option pursuant to the terms thereof or the exercise of any other right to acquire securities at a pre-established consideration unrelated to the current market;]

[(5)C] transactions reported on or through an exchange;

[(6)D] the acquisition of securities by a member as principal in anticipation of making an immediate exchange distribution or exchange offering on an exchange; [and]

[(7)E] purchases of securities off the floor of an exchange pursuant to a tender offer[.]; and

(F) transfers of securities made pursuant to an asset purchase agreement (APA) that is subject to the jurisdiction and approval of a court of competent jurisdiction in insolvency matters, provided that the purchase price under the APA is not based on, and cannot be adjusted to reflect, the current market prices of the securities on or following the effective date of the APA.

(2) The following shall not be reported to the FINRA/NYSE Trade Reporting Facility for publication purposes, but shall be reported for regulatory transaction fee assessment purposes under Rule 7230C(f):

(A) transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security, e.g., to enable the seller to make a gift; and

(B) purchases or sales of securities effected upon the exercise of an option pursuant to the terms thereof or the exercise of any other right to acquire securities at a pre-established consideration unrelated to the current market.

(f) through (h) No Change.

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6600. OTC REPORTING FACILITY

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6620. Reporting Transactions in OTC Equity Securities

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6622. Transaction Reporting

(a) through (d) No Change.

(e) [Transactions Not To Be Reported For Publication Purposes] Reporting Requirements For Certain Transactions and Transfers of Securities

(1) The following [types of transactions] shall not be reported [for publication purposes] to the OTC Reporting Facility:

[(1)A] Transactions that are part of a primary distribution by an issuer or a registered secondary distribution (other than “shelf distributions”) or of an unregistered secondary distribution;

[(2)B] Transactions made in reliance on Section 4(2) of the Securities Act; and

[(3) Transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security;]

[(4) Purchases or sales of securities effected upon the exercise of an option pursuant to the terms thereof or the exercise of any other right to acquire securities at a pre-established consideration unrelated to the current market.]

(C) transfers of securities made pursuant to an asset purchase agreement (APA) that is subject to the jurisdiction and approval of a court of competent jurisdiction in insolvency matters, provided that the purchase price under the APA is not based on, and cannot be adjusted to reflect, the current market prices of the securities on or following the effective date of the APA.

(2) The following shall not be reported to the OTC Reporting Facility for publication purposes, but shall be reported for regulatory transaction fee assessment purposes under Rule 7330(g):

(A) Transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security; and

(B) Purchases or sales of securities effected upon the exercise of an option pursuant to the terms thereof or the exercise of any other right to acquire securities at a pre-established consideration unrelated to the current market.

(f) through (g) No Change.

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6630. Reporting Transactions in PORTAL® Securities

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6633. Reporting Debt and Equity Transactions in PORTAL Securities

(a) Subject to Rule 6622(e)(1), [T]transactions in a PORTAL equity security shall be reported to the OTC Reporting Facility in accordance with this Rule. Each PORTAL transaction report on a PORTAL equity security shall:

(1) through (3) No Change.

(b) through (d) No Change.

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6640. Reporting Transactions in Direct Participation Program Securities

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6643. Transaction Reporting

(a) through (d) No Change.

(e) Transactions Not Required To Be Reported

The following [transactions] are not required to be reported under the foregoing procedures:

(1) through (3) No Change.

(4) Transfers of securities made pursuant to an asset purchase agreement (APA) that is subject to the jurisdiction and approval of a court of competent jurisdiction in insolvency matters, provided that the purchase price under the APA

is not based on, and cannot be adjusted to reflect, the current market prices of the securities on or following the effective date of the APA.

6700. TRADE REPORTING AND COMPLIANCE ENGINE (TRACE)

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6730. Transaction Reporting

(a) through (d) No Change.

(e) [Transactions Exempt From Reporting] Reporting Requirements For Certain Transactions and Transfers of Securities

The following [types of transactions] shall not be reported:

(1) through (5) No Change.

(6) Transfers of securities made pursuant to an asset purchase agreement (APA) that is subject to the jurisdiction and approval of a court of competent jurisdiction in insolvency matters, provided that the purchase price under the APA is not based on, and cannot be adjusted to reflect, the current market prices of the securities on or following the effective date of the APA.

(f) No Change.

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