

OMB APPROVAL

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

File No. SR - 2009 - 085

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		
			☐ 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 Order Reporting Requirements on the Alternative Display Facility.

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)

(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.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information

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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

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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

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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

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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

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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

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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

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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”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend FINRA Rule 6250 to allow end-of-day order reporting and require that participants on the Alternative Display Facility (“ADF”) provide order information to FINRA immediately upon request.

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

6000. QUOTATION AND TRANSACTION REPORTING FACILITIES

* * * * *

6200. ALTERNATIVE DISPLAY FACILITY

* * * * *

6250. Quote and Order Access Requirements

(a) No Change.

(b) Subject to the terms and conditions contained herein, all ADF Trading Centers that display quotations in the ADF must record each item of information described in paragraphs (b)(1) and (2) of this Rule for all orders they receive from another broker-dealer via direct or indirect electronic access, and report this information to FINRA as specified below.

¹ 15 U.S.C. 78s(b)(1).

(1) ADF Trading Centers must record the following information for every order they receive from another broker-dealer via direct or indirect electronic access:

(A) through (N) No Change.

The information described in subparagraphs (A) through (N) must be reported to FINRA [within 10 seconds] by 6:30 p.m. Eastern Time on the day of receipt of the order; provided, however, that an ADF Trading Center must report any information described in subparagraphs (A) through (N) to FINRA immediately upon request.

(2) In addition to the information previously provided pursuant to paragraph (b)(1), ADF Trading Centers must record the following information, as applicable, for every order received via direct or indirect access from another broker-dealer that has been acted upon or responded to:

(A) through (E) No Change.

The information described in subparagraphs (A) through (E) must be reported to FINRA [within 10 seconds] by 6:30 p.m. Eastern Time on the day of any response to or action taken regarding an order; provided, however, that an ADF Trading Center must report any information described in subparagraphs (A) through (E) to FINRA immediately upon request. [In the event that a member receives and executes an order within 10 seconds, the member may submit a single report that contains the information required in paragraphs (b)(1) and (b)(2).]

(3) through (7) No Change.

(c) through (g) No Change.

* * * * *

(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.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, such that FINRA can implement the proposed rule change immediately.

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

(a) Purpose

In 2002, FINRA created the ADF to ensure that any FINRA member, including alternative trading systems, seeking to display quotations for NMS stocks in the over-the-counter ("OTC") market, rather than through an exchange platform, has an alternative venue through which to post its OTC quotations and report trades.² Pursuant to FINRA Rule 6250(b), any ADF Trading Center that displays quotations on the ADF must record

² Initially, the ADF was limited to quotations and trade reports in Nasdaq securities. See Securities Exchange Act Release No. 46249 (July 24, 2002), 67 FR 49822 (July 31, 2002). In 2006, the ADF was expanded to include all NMS stocks. See Securities Exchange Act Release No. 54537 (September 28, 2006), 71 FR 59173 (October 6, 2006).

certain order and order response information and report the information to FINRA within ten seconds of receipt of the order or of any response to or action taken regarding an order, respectively. These requirements were originally included in the ADF rules to allow FINRA to ensure that ADF participants were complying with certain trading rules, including honoring their quotations displayed on the ADF and not “backing away” from orders received against such displayed quotations.³

FINRA has found that receiving ADF order reporting data real-time has been of minimal value due to the very limited instances of “backing away” on the ADF and that real-time order reporting poses a significant strain on the ADF’s real-time systems capacity. To the latter point, because of capacity issues, LavaFlow, Inc. (“LavaFlow”), currently the sole ADF participant, requested that FINRA consider amending Rule 6250 to permit end-of-day order reporting rather than require ten-second order reporting.⁴ LavaFlow stated that it believed that such an amendment would address strains on the ADF’s capacity while still providing FINRA with accurate and timely order information.

Accordingly, FINRA is proposing to replace the current ten-second order reporting requirement with an end-of-day order reporting requirement; however, to ensure that FINRA has prompt access to this regulatory information if necessary (e.g., a “backing-away” complaint is made against an ADF Trading Center), the proposed rule change also requires ADF Trading Centers to provide order information to FINRA

³ See Securities Exchange Act Release No. 46249 (July 24, 2002), 67 FR 49822 (July 31, 2002). Consistent with Rule 602(b)(2) of SEC Regulation NMS, quotations on the ADF must be “firm.” See 17 CFR 242.602(b)(2); FINRA Rule 6272(b).

⁴ A copy of LavaFlow’s request is attached to the proposed rule change as Exhibit 2.

immediately upon request. Thus, the proposed rule change will improve the systems supporting the ADF and its functionality by reducing the amount of real-time reporting that must flow through ADF systems, while still providing FINRA with order information on a timely basis.⁵

As noted in Item 2 of this filing, FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, such that FINRA can implement the proposed rule change immediately.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁶ 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 enhance the ADF's functionality and decrease the likelihood of systems issues while continuing to ensure that FINRA has necessary regulatory information sufficient to monitor for compliance with applicable rules.

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

⁵ ADF Trading Centers would transmit the same information in the same format as currently required. Consequently, the sole effect of the proposed rule change is to provide ADF Trading Centers with additional time to report order information.

⁶ 15 U.S.C. 78o-3(b)(6).

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**

A copy of a letter submitted by LavaFlow requesting amendments to the ADF order reporting rule is attached as Exhibit 2.

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) of the Act⁷ and paragraph (f)(6) of Rule 19b-4 thereunder,⁸ 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 or such shorter time as the Commission may designate.

FINRA requests that the Commission waive the requirement that the rule change, by its terms, not become operative for 30 days after the date of the filing as set forth in Rule 19b-4(f)(6)(iii),⁹ to alleviate strain on the ADF system. FINRA notes that the proposed rule change does not impose any new obligations on members, and members can continue to transmit order information to the ADF in the same manner as they

⁷ 15 U.S.C. 78s(b)(3).

⁸ 17 CFR 240.19b-4(f)(6).

⁹ 17 CFR 240.19b-4(f)(6)(iii).

currently do. In accordance with Rule 19b-4(f)(6),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.

9. Exhibits

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

Exhibit 2. Copy of request submitted by LavaFlow, Inc.

¹⁰ 17 CFR 240.19b-4(f)(6).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2009-085)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Order Reporting Requirements on the Alternative Display Facility

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”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ 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 6250 to allow end-of-day order reporting and require that participants on the Alternative Display Facility (“ADF”) provide order information to FINRA immediately upon request.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

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

In 2002, FINRA created the ADF to ensure that any FINRA member, including alternative trading systems, seeking to display quotations for NMS stocks in the over-the-counter ("OTC") market, rather than through an exchange platform, has an alternative venue through which to post its OTC quotations and report trades.⁴ Pursuant to FINRA Rule 6250(b), any ADF Trading Center that displays quotations on the ADF must record certain order and order response information and report the information to FINRA within ten seconds of receipt of the order or of any response to or action taken regarding an order, respectively. These requirements were originally included in the ADF rules to

⁴ Initially, the ADF was limited to quotations and trade reports in Nasdaq securities. See Securities Exchange Act Release No. 46249 (July 24, 2002), 67 FR 49822 (July 31, 2002). In 2006, the ADF was expanded to include all NMS stocks. See Securities Exchange Act Release No. 54537 (September 28, 2006), 71 FR 59173 (October 6, 2006).

allow FINRA to ensure that ADF participants were complying with certain trading rules, including honoring their quotations displayed on the ADF and not “backing away” from orders received against such displayed quotations.⁵

FINRA has found that receiving ADF order reporting data real-time has been of minimal value due to the very limited instances of “backing away” on the ADF and that real-time order reporting poses a significant strain on the ADF’s real-time systems capacity. To the latter point, because of capacity issues, LavaFlow, Inc. (“LavaFlow”), currently the sole ADF participant, requested that FINRA consider amending Rule 6250 to permit end-of-day order reporting rather than require ten-second order reporting. LavaFlow stated that it believed that such an amendment would address strains on the ADF’s capacity while still providing FINRA with accurate and timely order information.

Accordingly, FINRA is proposing to replace the current ten-second order reporting requirement with an end-of-day order reporting requirement; however, to ensure that FINRA has prompt access to this regulatory information if necessary (e.g., a “backing-away” complaint is made against an ADF Trading Center), the proposed rule change also requires ADF Trading Centers to provide order information to FINRA immediately upon request. Thus, the proposed rule change will improve the systems supporting the ADF and its functionality by reducing the amount of real-time reporting

⁵ See Securities Exchange Act Release No. 46249 (July 24, 2002), 67 FR 49822 (July 31, 2002). Consistent with Rule 602(b)(2) of SEC Regulation NMS, quotations on the ADF must be “firm.” See 17 CFR 242.602(b)(2); FINRA Rule 6272(b).

that must flow through ADF systems, while still providing FINRA with order information on a timely basis.⁶

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, such that FINRA can implement the proposed rule change immediately.

2. 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 enhance the ADF's functionality and decrease the likelihood of systems issues while continuing to ensure that FINRA has necessary regulatory information sufficient to monitor for compliance with applicable rules.

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

⁶ ADF Trading Centers would transmit the same information in the same format as currently required. Consequently, the sole effect of the proposed rule change is to provide ADF Trading Centers with additional time to report order information.

⁷ 15 U.S.C. 78o-3(b)(6).

A copy of a letter submitted by LavaFlow requesting amendments to the ADF order reporting rule was attached to the proposed rule change.

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 Act⁸ and Rule 19b-4(f)(6) thereunder.⁹

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

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2009-085 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-FINRA-2009-085. 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 available publicly. All submissions should refer to File Number SR-FINRA-2009-085 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.¹⁰

Florence E. Harmon

Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).

LavaFlow, Inc.
1735 K Street NW
Washington, DC 20006

SEP 23 2009
10:10 AM
FINRA



RECEIVED

SEP 23 2009

VIA OVERNIGHT MAIL

Ms. Stephanie Dumont
FINRA
Office of the General Counsel
1735 K Street NW
Washington DC 20006

Office of General Counsel

Re: Proposed Change to FINRA Rule 6250 ("Rule 6250")

Dear Ms. Dumont:

LavaFlow, Inc. ("FLOW") respectfully submits the following proposed change to Rule 6250(b).

FLOW has recently seen a spike in its message traffic between the FINRA Alternative Display Facility ("ADF") and FLOW causing strains on bandwidth used to send messages between the two systems. This strain has caused several issues including, but not limited to, disconnections from the ADF system, late trade reporting and stale quotes on the ADF. The strain on the system and the associated disconnects has cost substantial time to the operations, technical and business staff of both the ADF and FLOW.

The strain is caused in large part to the requirement under FINRA Rule 6250(b) that FLOW submit order and order response information to the ADF within ten (10) seconds of receipt of an order or within ten (10) seconds of any response to or action taken in regard to an order.

FLOW therefore would like to request that FINRA Rule 6250(b) be amended to allow the orders and order reports to be batched and reported at the end of the day rather than within ten (10) seconds. FLOW believes this will address the strain on the ADF and FLOW systems, and will still provide accurate and timely information to FINRA.

To be clear, FLOW is not requesting that the real-time reporting for quote and trade reports be changed. Rather, FLOW is requesting that order and order reports would be submitted after the end of the trading day, similar to how OATS are currently required to be reported.

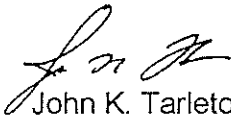
FLOW believes that this proposed change would not result in any adverse affects. FINRA would continue to receive the required information necessary to effectively operate and enforce their regulatory mandate. However, the proposed change would relieve the bandwidth strain on the system without requiring significant changes to the ADF system.

The proposed change would also allow firms to more accurately report order and order response information. For example, some orders which may initially appear to add liquidity to the ADF participant system, and therefore would not have an order response report due to FINRA, may under some circumstances eventually remove liquidity and thus be required to be reported as order response information. This proposal would allow firms the option to review their transaction activity prior to sending to FINRA so that only the required liquidity removing order response information would be submitted. This could limit the amount of additional information submitted to FINRA, which could enhance FINRA's ability to examine this information more expeditiously.

FLOW does not believe that this proposed change to Rule 6250(b) would be burdensome to ADF participants or to competitors of the ADF.

Please do not hesitate to contact the undersigned at 212-519-8963 should you have any questions regarding this matter.

Sincerely,



John K. Tarleton
Chief Compliance Officer

CC: Chris Stone
Terry Kirby