

OMB APPROVAL

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

File No. SR - 2010 - 017
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) ☐
Pilot ☐			Rule		
Extension of Time Period for Commission Action ☐			☐ 19b-4(f)(1) ☐ 19b-4(f)(4) ☐ 19b-4(f)(2) ☐ 19b-4(f)(5) ☐ 19b-4(f)(3) ☒ 19b-4(f)(6)		
Date Expires 					

Exhibit 2 Sent As Paper Document
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Exhibit 3 Sent As Paper Document
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Description

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

Proposed Rule Change to Allow FINRA Members to Use the OTC Reporting Facility to Transfer Transaction Fees Charged by One Member to Another Member

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)

Senior 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

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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 (1) adopt FINRA Rule 7330(i) to permit FINRA members to use the OTC Reporting Facility (the “ORF”) to transfer transaction fees charged by one member to another member on trades reported to the ORF; and (2) amend FINRA Rule 7710 to establish the fee to be charged by the ORF for use of the transaction fee transfer service.

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

* * * * *

6600. OTC REPORTING FACILITY

* * * * *

6620. Reporting Transactions in OTC Equity Securities

* * * * *

6622. Transaction Reporting

(a) through (g) No Change.

(h) A member may agree to allow another member to report and lock-in trades on its behalf, if both parties have completed an agreement to that effect (a “give up agreement”) as specified by FINRA and submitted it to the OTC Reporting Facility.

¹ 15 U.S.C. 78s(b)(1).

However, the member with the reporting obligation remains responsible for the transaction submitted on its behalf. Further, both the member with the reporting obligation and the member submitting the trade to the OTC Reporting Facility are responsible for ensuring that the information submitted is in compliance with all applicable rules and regulations.

• • • **Supplementary Material:** -----

No Change.

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**7000. CLEARING, TRANSACTION AND ORDER DATA REQUIREMENTS,
AND FACILITY CHARGES**

* * * * *

7300. OTC REPORTING FACILITY

* * * * *

7330. Trade Report Input

(a) through (c) No Change.

(d) Trade Information To Be Input

(1) through (13) No Change.

(14) For any transaction for which the OTC Reporting Facility is used to transfer a transaction fee between two FINRA members, the trade report must comply with the requirements of Rule 7330(i).

(e) through (h) No Change.

(i) Inclusion of Transaction Fees in Clearing Reports Submitted to the OTC Reporting Facility

FINRA members may agree in advance to transfer a transaction fee charged by one member to another member on a transaction reported to the OTC Reporting Facility through the submission of a clearing report to the OTC Reporting Facility. Such report, inclusive of the transaction fee, will be submitted to the National Securities Clearing Corporation for processing. To facilitate the transfer of the transaction fee, the report submitted to the OTC Reporting Facility shall provide, in addition to all other information required to be submitted by any other rule, a total per share or contract price amount, inclusive of the transaction fee. Prior to submitting any such report, both members and their respective clearing firms, as applicable, must have executed an agreement, as specified by FINRA, permitting the facilitation of the transfer of the transaction fee through the OTC Reporting Facility, as well as any other applicable agreement, such as a give up agreement pursuant to Rule 6622(h), and submitted the executed agreement(s) to the OTC Reporting Facility. Such agreement(s) are considered member records for purposes of NASD Rule 3110(a) and must be made and preserved by both members in conformity with applicable FINRA rules. Nothing in this paragraph shall relieve a member from its obligations under FINRA rules and the federal securities laws, including but not limited to, NASD Rule 2230 and SEA Rule 10b-10.

Example:

SELL 100 shares to another member at 10 plus a transaction fee of .01 per share;
REPORT 100 shares at 10 (the per share price exclusive of the transaction fee) to
the OTC Reporting Facility for publication and also report 10.01 (the per share
price inclusive of the transaction fee) for purposes of clearance and settlement
through the National Securities Clearing Corporation.

* * * * *

**7700. CHARGES FOR OTC REPORTING FACILITY, OTC BULLETIN BOARD
AND TRADE REPORTING AND COMPLIANCE ENGINE SERVICES**

7710. OTC Reporting Facility

The following charges shall be paid by the participant for trade reporting to the
OTC Reporting Facility:

Transaction Related Charges:	
Reporting of transactions not subject to comparison through the OTC Reporting Facility	\$0.029/side
<u>Clearing report to transfer a transaction fee charged by one member to another member pursuant to Rule 7330(i)</u>	<u>\$0.03/side</u>
Comparison	\$0.0144/side per 100 shares (minimum 400 shares; maximum 7,500 shares)
Late Report—T+N	\$0.288/side
Query	\$0.50/query
Corrective Transaction Charge	\$0.25/Cancel, Error, Inhibit, Kill, or 'No' portion of No/Was transaction, paid by reporting side; \$0.25/Break,

	Decline transaction, paid by each party
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* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change has been approved by senior management 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. The operative date will be June 1, 2010.

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

(a) Purpose

Background

Rule 7230A(h) permits FINRA members to agree in advance to transfer a transaction fee charged by one member to another member on a transaction in NMS stocks effected otherwise than on an exchange through the submission of a clearing report to the FINRA/Nasdaq Trade Reporting Facility ("FINRA/Nasdaq TRF"). Prior to the adoption of Rule 7230A(h) in 2007,² there was no mechanism for members to charge

² See Securities Exchange Act Release No. 56007 (July 3, 2007), 72 FR 37807 (July 11, 2007) (Notice of Filing and Immediate Effectiveness of File No. SR-NASD-2007-046).

each other commissions or other explicit transaction fees through the FINRA trade reporting and clearance submission process. Generally, members wanting to charge other members an explicit transaction fee either billed and collected those fees directly from the other member outside the transaction reporting and clearing process or traded on a “net” basis.³ Rule 7230A(h) provides members with another alternative by permitting the transfer of a transaction fee as part of a clearing report submitted to the FINRA/Nasdaq TRF.

Proposed Amendments Relating to Transfer of Transaction Fees in Clearing Reports Submitted to the ORF

The proposed rule change would adopt a provision identical to Rule 7230A(h) for purposes of transferring transaction fees between members as part of a clearing report submitted to the ORF. Specifically, pursuant to proposed Rule 7330(i), members would be required to provide in reports submitted to the ORF, in addition to all other information required to be submitted by any other rule, a total per share or contract price amount, inclusive of the transaction fee. As a result, members would submit two price amounts as part of their report to the ORF: one price including the transaction fee, which

SR-NASD-2007-046 proposed to adopt paragraph (h) of NASD Rule 6130. Pursuant to SR-FINRA-2008-021, NASD Rule 6130 was renumbered as FINRA Rule 7230A. See Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (Order Approving File No. SR-FINRA-2008-021).

³ Trading on a “net basis” means that the broker-dealer’s compensation is implicitly included in the execution price disseminated to the tape and reported for clearance and settlement to the National Securities Clearing Corporation (“NSCC”). For example, broker-dealer 1 (B/D 1) purchases a security at \$10 and sells the security to broker-dealer 2 (B/D 2) “net” at a price of \$10.001. Because \$10.001 is the reported trade price, the transaction fee is included as part of the trade and is transferred as part of the clearance and settlement process.

would be submitted by the ORF to NSCC for clearance and settlement; and one price exclusive of the transaction fee, which would be publicly disseminated. For example, if B/D 1 purchases from B/D 2 at \$10.00 and B/D 1 and B/D 2 agree to a transaction fee of \$.001 per share, the trade price that would be publicly disseminated would be \$10.00, while the trade would be cleared and settled by NSCC at \$10.001.⁴ The parties to the trade would know both prices – the price reported for public dissemination and the clearance/settlement price.

Proposed Rule 7330(i) provides that both members and their respective clearing firms, as applicable, must execute an agreement, as specified by FINRA, permitting the facilitation of the transfer of the transaction fee through the ORF, as well as any other applicable agreement, such as a give up agreement.⁵ Such agreement must be executed and submitted to the ORF before the members can transfer any transaction fee under the proposed rule. Among other things, the form of agreement specified by FINRA would expressly provide that the acceptance and processing by the ORF of the transaction fee as part of a trade report shall not constitute an estoppel as to FINRA or bind FINRA in any subsequent administrative, civil or disciplinary proceeding with respect to the transaction

⁴ If the parties were trading on a net basis with the fee incorporated in the trade price, the transaction at a price of \$10.001 would be reported to the tape and also submitted to NSCC.

⁵ FINRA also is proposing to adopt paragraph (h) of Rule 6622, which would provide expressly that members may enter into “give up” arrangements whereby one member reports to the ORF on behalf of another member, provided that both members have executed and submitted to the ORF the appropriate documentation. The proposed provision is identical to the current rules relating to the FINRA/Nasdaq Trade Reporting Facility and the FINRA/NYSE Trade Reporting Facility and codifies current practice and guidance with respect to reporting to the FINRA Facilities. See Rules 6380A(h) and 6380B(g); Member Alert: Notice to All TRF, ADF and Other NASD Facility Participants Regarding AGU and QSR Relationships (January 25, 2007).

fee transferred. In other words, processing of a transaction fee by the ORF should not be taken to mean that FINRA approved that transaction fee or its amount or its appropriateness under FINRA rules or federal securities laws. The mere fact that the transaction fee flowed through a FINRA facility will not be a defense to any action taken by FINRA relating to the fee. The proposed rule also provides that the relevant agreements are considered member records for purposes of NASD Rule 3110(a) and must be made and preserved by both members in conformity with applicable FINRA rules.

Furthermore, the proposed rule expressly provides that it shall not relieve a member from its obligations under FINRA rules and federal securities laws, including but not limited to, NASD Rule 2230 (Confirmations) and SEA Rule 10b-10. To the extent that any transaction fee is passed onto the customer, members should review their customer confirmation obligations to ensure that they are disclosing such fees in compliance with all applicable rules and regulations, as well as other FINRA rules, including but not limited to, NASD Rules 2320 (Best Execution and Interpositioning) and 2440 (Fair Prices and Commissions).

The proposed rule relates solely to transaction fees charged by one FINRA member to another FINRA member. Members would not be able to use the ORF to facilitate the transfer of fees for transactions with a customer (i.e., clients that are not brokers or dealers) or a non-member. In addition, the ORF can only be used to facilitate the transfer of transaction fees. Members would not be able to use the ORF to transfer access fees or rebates on transactions.

FINRA also is proposing to amend Rule 7330(d) to require that for any transaction for which the ORF is used to transfer a transaction fee between two members,

the trade report must comply with the requirements of proposed Rule 7330(i). Thus, while use of the ORF to transfer transaction fees between members is voluntary, members that opt to use this service must comply with the requirements of proposed Rule 7330(i), as well as all other applicable FINRA rules.

Proposed Fee for Use of Transaction Fee Transfer Service

In this filing, FINRA also is proposing to establish the fee to be charged by the ORF for use by members of the transaction fee transfer service. Pursuant to Rule 7710, the fee will be \$0.03 per side for each clearing report submitted to the ORF to transfer a transaction fee. This fee is in addition to any other fee applicable to the transaction. The amount of this fee is identical to the fee charged by the FINRA/Nasdaq TRF under Rule 7620A for the same transaction fee transfer service.

As noted in Item 2 of this filing, FINRA has filed the proposed rule change for immediate effectiveness. The operative date will be June 1, 2010.

(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 by automating and improving transaction fee transfers between members as a value-added service, the proposed rule change will enhance market transparency.

⁶ 15 U.S.C. 78o-3(b)(6).

Additionally, FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,⁷ 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 fee for the service is reasonably allocated among members based on their usage of the functionality to transfer transaction fees between members and is generally consistent with other fees charged by the ORF and other FINRA trade reporting facilities.

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

⁷ 15 U.S.C. 78o-3(b)(5).

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6).

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. FINRA believes that the filing is appropriately designated as “non-controversial” because the proposed rule change would adopt rules relating to a value-added service, the use of which would be voluntary, for members reporting to the ORF, and the proposed amendments are identical to existing rules relating to the FINRA/Nasdaq TRF.¹⁰ In accordance with Rule 19b-4,¹¹ 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.

Additionally, the proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act¹² and paragraph (f)(2) of Rule 19b-4 thereunder,¹³ in that the proposed rule change is establishing or changing a due, fee, or other charge applicable only to a member.

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.

¹⁰ See Rules 7230A(h) and 7620A.

¹¹ 17 CFR 240.19b-4.

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2010-017)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Allow FINRA Members to Use the OTC Reporting Facility to Transfer Transaction Fees Charged by One Member to Another Member

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 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. Additionally, FINRA has designated the proposed rule change as “establishing or changing a due, fee or other charge” under Section 19(b)(3)(A) of the Act⁵ and Rule 19b-4(f)(2) thereunder,⁶ 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

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).

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4(f)(2).

from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to (1) adopt FINRA Rule 7330(i) to permit FINRA members to use the OTC Reporting Facility (the "ORF") to transfer transaction fees charged by one member to another member on trades reported to the ORF; and (2) amend FINRA Rule 7710 to establish the fee to be charged by the ORF for use of the transaction fee transfer service.

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

Rule 7230A(h) permits FINRA members to agree in advance to transfer a transaction fee charged by one member to another member on a transaction in NMS stocks effected otherwise than on an exchange through the submission of a clearing

report to the FINRA/Nasdaq Trade Reporting Facility (“FINRA/Nasdaq TRF”). Prior to the adoption of Rule 7230A(h) in 2007,⁷ there was no mechanism for members to charge each other commissions or other explicit transaction fees through the FINRA trade reporting and clearance submission process. Generally, members wanting to charge other members an explicit transaction fee either billed and collected those fees directly from the other member outside the transaction reporting and clearing process or traded on a “net” basis.⁸ Rule 7230A(h) provides members with another alternative by permitting the transfer of a transaction fee as part of a clearing report submitted to the FINRA/Nasdaq TRF.

Proposed Amendments Relating to Transfer of Transaction Fees in Clearing Reports Submitted to the ORF

The proposed rule change would adopt a provision identical to Rule 7230A(h) for purposes of transferring transaction fees between members as part of a clearing report submitted to the ORF. Specifically, pursuant to proposed Rule 7330(i), members would

⁷ See Securities Exchange Act Release No. 56007 (July 3, 2007), 72 FR 37807 (July 11, 2007) (Notice of Filing and Immediate Effectiveness of File No. SR-NASD-2007-046).

SR-NASD-2007-046 proposed to adopt paragraph (h) of NASD Rule 6130. Pursuant to SR-FINRA-2008-021, NASD Rule 6130 was renumbered as FINRA Rule 7230A. See Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (Order Approving File No. SR-FINRA-2008-021).

⁸ Trading on a “net basis” means that the broker-dealer’s compensation is implicitly included in the execution price disseminated to the tape and reported for clearance and settlement to the National Securities Clearing Corporation (“NSCC”). For example, broker-dealer 1 (B/D 1) purchases a security at \$10 and sells the security to broker-dealer 2 (B/D 2) “net” at a price of \$10.001. Because \$10.001 is the reported trade price, the transaction fee is included as part of the trade and is transferred as part of the clearance and settlement process.

be required to provide in reports submitted to the ORF, in addition to all other information required to be submitted by any other rule, a total per share or contract price amount, inclusive of the transaction fee. As a result, members would submit two price amounts as part of their report to the ORF: one price including the transaction fee, which would be submitted by the ORF to NSCC for clearance and settlement; and one price exclusive of the transaction fee, which would be publicly disseminated. For example, if B/D 1 purchases from B/D 2 at \$10.00 and B/D 1 and B/D 2 agree to a transaction fee of \$.001 per share, the trade price that would be publicly disseminated would be \$10.00, while the trade would be cleared and settled by NSCC at \$10.001.⁹ The parties to the trade would know both prices – the price reported for public dissemination and the clearance/settlement price.

Proposed Rule 7330(i) provides that both members and their respective clearing firms, as applicable, must execute an agreement, as specified by FINRA, permitting the facilitation of the transfer of the transaction fee through the ORF, as well as any other applicable agreement, such as a give up agreement.¹⁰ Such agreement must be executed and submitted to the ORF before the members can transfer any transaction fee under the

⁹ If the parties were trading on a net basis with the fee incorporated in the trade price, the transaction at a price of \$10.001 would be reported to the tape and also submitted to NSCC.

¹⁰ FINRA also is proposing to adopt paragraph (h) of Rule 6622, which would provide expressly that members may enter into “give up” arrangements whereby one member reports to the ORF on behalf of another member, provided that both members have executed and submitted to the ORF the appropriate documentation. The proposed provision is identical to the current rules relating to the FINRA/Nasdaq Trade Reporting Facility and the FINRA/NYSE Trade Reporting Facility and codifies current practice and guidance with respect to reporting to the FINRA Facilities. See Rules 6380A(h) and 6380B(g); Member Alert: Notice to All TRF, ADF and Other NASD Facility Participants Regarding AGU and QSR Relationships (January 25, 2007).

proposed rule. Among other things, the form of agreement specified by FINRA would expressly provide that the acceptance and processing by the ORF of the transaction fee as part of a trade report shall not constitute an estoppel as to FINRA or bind FINRA in any subsequent administrative, civil or disciplinary proceeding with respect to the transaction fee transferred. In other words, processing of a transaction fee by the ORF should not be taken to mean that FINRA approved that transaction fee or its amount or its appropriateness under FINRA rules or federal securities laws. The mere fact that the transaction fee flowed through a FINRA facility will not be a defense to any action taken by FINRA relating to the fee. The proposed rule also provides that the relevant agreements are considered member records for purposes of NASD Rule 3110(a) and must be made and preserved by both members in conformity with applicable FINRA rules.

Furthermore, the proposed rule expressly provides that it shall not relieve a member from its obligations under FINRA rules and federal securities laws, including but not limited to, NASD Rule 2230 (Confirmations) and SEA Rule 10b-10. To the extent that any transaction fee is passed onto the customer, members should review their customer confirmation obligations to ensure that they are disclosing such fees in compliance with all applicable rules and regulations, as well as other FINRA rules, including but not limited to, NASD Rules 2320 (Best Execution and Interpositioning) and 2440 (Fair Prices and Commissions).

The proposed rule relates solely to transaction fees charged by one FINRA member to another FINRA member. Members would not be able to use the ORF to facilitate the transfer of fees for transactions with a customer (i.e., clients that are not brokers or dealers) or a non-member. In addition, the ORF can only be used to facilitate

the transfer of transaction fees. Members would not be able to use the ORF to transfer access fees or rebates on transactions.

FINRA also is proposing to amend Rule 7330(d) to require that for any transaction for which the ORF is used to transfer a transaction fee between two members, the trade report must comply with the requirements of proposed Rule 7330(i). Thus, while use of the ORF to transfer transaction fees between members is voluntary, members that opt to use this service must comply with the requirements of proposed Rule 7330(i), as well as all other applicable FINRA rules.

Proposed Fee for Use of Transaction Fee Transfer Service

In this filing, FINRA also is proposing to establish the fee to be charged by the ORF for use by members of the transaction fee transfer service. Pursuant to Rule 7710, the fee will be \$0.03 per side for each clearing report submitted to the ORF to transfer a transaction fee. This fee is in addition to any other fee applicable to the transaction. The amount of this fee is identical to the fee charged by the FINRA/Nasdaq TRF under Rule 7620A for the same transaction fee transfer service.

FINRA has filed the proposed rule change for immediate effectiveness. The operative date will be June 1, 2010.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹¹ 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

¹¹ 15 U.S.C. 78o-3(b)(6).

interest. FINRA believes that by automating and improving transaction fee transfers between members as a value-added service, the proposed rule change will enhance market transparency.

Additionally, FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,¹² 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 fee for the service is reasonably allocated among members based on their usage of the functionality to transfer transaction fees between members and is generally consistent with other fees charged by the ORF and other FINRA trade reporting facilities.

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,

¹² 15 U.S.C. 78o-3(b)(5).

or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴ Additionally, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁵ and paragraph (f)(2) of Rule 19b-4 thereunder.¹⁶

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-2010-017 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Florence E. Harmon, Deputy

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(2).

Secretary, Securities and Exchange Commission, 100 F Street, NE,
Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2010-017. 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-2010-017 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.¹⁷

Florence E. Harmon

Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).