

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 the Exchange. 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-CHX-2007-24 and should be submitted on or before April 7, 2008.

#### IV. Discussion and Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>8</sup> and, in particular, the requirements of Section 6(b) of the Act<sup>9</sup> and the rules and regulations thereunder. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>10</sup> in that the proposal is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

The Commission considers that in most circumstances trades that are executed between parties should be honored. On rare occasions, the price of the executed trade indicates a "clearly erroneous" transaction may exist, suggesting that it is unrealistic to expect that the parties to the trade had come to a meeting of the minds regarding the terms of the transaction. In the Commission's view, the determination of whether a transaction is clearly erroneous and the process for reviewing such a determination should be based on specific and objective criteria and

subject to specific and objective procedures.

The Commission believes that the thirty-minute time frame and the thresholds for determining whether a transaction is eligible for review are clear and objective. The Commission further believes that the simplification of the notification process, the streamlining of the appeals process, and the granting of discretion to the Exchange to better deal with situations involving systems disruption or extraordinary market conditions are appropriate and consistent with the Act.

Pursuant to Section 19(b)(2) of the Act,<sup>11</sup> the Commission finds good cause to approve the proposal, as amended, prior to the thirtieth day after the amended proposal is published for comment in the **Federal Register**. Amendment No. 2 merely clarifies that an eligibility determination by the Exchange under Article 20, Rule 10 may be appealed to a subcommittee of the Committee on Exchange Procedure. Accelerating approval of the amended proposal would give parties affected by such a determination the right to have the decision reviewed. Accordingly, the Commission finds good cause to accelerate approval of the amended proposal prior to the thirtieth day after publication in the **Federal Register**.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-CHX-2007-24), as modified by Amendments No. 1 and 2, is hereby approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57462; File No. SR-FINRA-2008-006]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish a Minimum Quarterly Threshold for Securities Transaction Credit Under NASD Rule 7001C

March 10, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 28, 2008, Financial Industry Regulatory Authority, Inc. ("FINRA"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared substantially by FINRA. FINRA filed the proposed rule change under Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

FINRA is proposing to establish a minimum quarterly threshold for FINRA members that report transactions to the NASD/NSX Trade Reporting Facility (the "NASD/NSX TRF")<sup>5</sup> to be eligible to receive the securities transaction credit under NASD Rule 7001C (Securities Transaction Credit). In addition, FINRA is proposing a technical change to clarify an ambiguity relating to the definition of "Tape B" in Rule 7001C. The text of the proposed rule change is available at <http://www.finra.org>, the principal offices of FINRA, and the Commission's Public Reference Room.

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

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

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

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

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

<sup>8</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

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

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

#### 1. Purpose

##### Background

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

In connection with the establishment of the NASD/NSX TRF, FINRA and National Stock Exchange, Inc. ("NSX"), entered into a Limited Liability Company Agreement for NASD/NSX Trade Reporting Facility LLC (the "NASD/NSX TRF LLC Agreement"), a copy of which appears in the NASD Manual. Under the NASD/NSX TRF LLC Agreement, FINRA, the "SRO Member," has sole regulatory responsibility for the NASD/NSX TRF. NSX, the "Business Member," is primarily responsible for the management of the NASD/NSX TRF's business affairs, including establishing pricing for use of the NASD/NSX TRF, to the extent those affairs are not inconsistent with the regulatory and oversight functions of FINRA. Additionally, the Business Member is obligated to pay the cost of regulation and is entitled to the profits and losses, if any, derived from the operation of the NASD/NSX TRF.

Pursuant to NASD Rule 7001C, FINRA members reporting trades in Tape A, Tape B and Tape C securities to the NASD/NSX TRF currently receive a 50% *pro rata* credit on gross market

data revenue earned by the NASD/NSX TRF. "Gross revenue" is the revenue received by the NASD/NSX TRF from the three tape associations after the tape associations deduct allocated support costs and unincorporated business costs.

#### Proposed Amendments to Rule 7001C

FINRA is proposing to establish a minimum quarterly threshold for FINRA members that report transactions to the NASD/NSX TRF to be eligible to receive the securities transaction credit under Rule 7001C. Specifically, FINRA is proposing to adopt new paragraph (b) of Rule 7001C, which provides that no FINRA member shall be eligible to receive a securities transaction credit under Rule 7001C for any calendar quarter in which the total transaction credit payable to such member is less than \$250. Thus, pursuant to the proposed rule, a member's securities transaction credit totaling less than \$250 for any given calendar quarter would be forfeited. NSX, as the Business Member, believes that establishing this \$250 threshold is beneficial because it eliminates the administrative and clerical burden of having to process such *de minimis* payments.

FINRA also is proposing a technical amendment to clarify an ambiguity in current Rule 7001C. Rule 7001C refers to "Amex" and "Tape B" as synonymous, but in fact the Tape B revenue sharing program is interpreted to include stocks listed on regional exchanges, such as NYSE Arca, because transactions in such stocks are reported to Tape B.<sup>8</sup>

FINRA has filed the proposed rule change for immediate effectiveness. FINRA will implement the proposed rule change on April 1, 2008.

#### 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>9</sup> in general, and with Section 15A(b)(5) of the Act,<sup>10</sup> in particular, which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes that the proposed rule change is a reasonable and equitable credit structure in that it will be applied

uniformly to all FINRA members that report trades to the NASD/NSX TRF.

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

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments were neither solicited nor received.

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

FINRA has designated the proposed rule change as one that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. In addition, as required under Rule 19b-4(f)(6)(iii),<sup>11</sup> FINRA provided the Commission with written notice of its intention to file the proposed rule change, along with a brief description of the text of the proposed rule change, at least five business days prior to filing the proposal with the Commission. FINRA believes that the filing is appropriately designated as "non-controversial" because the proposed rule change is identical to the market data revenue rebate threshold that was recently adopted by NSX.<sup>12</sup> Therefore, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup>

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,

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

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

<sup>8</sup> FINRA recently proposed an identical change to NASD Rule 7001B relating to the NASD/Nasdaq TRF. See Securities Exchange Act Release No. 57164 (January 17, 2008), 73 FR 4295 (January 24, 2008) (SR-FINRA-2007-041).

<sup>9</sup> 15 U.S.C. 78o-3.

<sup>10</sup> 15 U.S.C. 78o-3(b)(5).

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>12</sup> See Securities Exchange Act Release No. 57316 (February 12, 2008), 73 FR 9379 (February 20, 2008) (SR-NSX-2008-01).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2008-006 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-FINRA-2008-006. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-FINRA-2008-006 and should be submitted on or before April 7, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-57450; File No. SR-ISE-2008-15]

### **Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change Relating to the Exchange's Limitation of Liability**

March 7, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 5, 2008, the International Securities Exchange, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared substantially by the ISE. 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**

The ISE proposes to amend ISE Rule 705, Limitation of Liability, to codify that it may provide compensation for losses sustained by Members as a result of a malfunction of the Exchange's physical equipment, devices and/or programming. The text of the proposed rule change is available at the ISE, the Commission's Public Reference Room, and <http://www.ise.com>.

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

In its filing with the Commission, the ISE 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. The ISE 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**

The ISE proposes to amend ISE Rule 705 to codify that it may provide compensation for losses sustained by

Members as a result of a malfunction of the Exchange's physical equipment, devices, and/or programming. Currently, ISE Rule 705 generally states that the Exchange is not liable for any losses due to the Exchange's negligence or unintentional actions. Notwithstanding the Exchange's current limitation on liability, from a customer service perspective, the Exchange may compensate a Member for certain identified losses.<sup>3</sup> As such, the Exchange proposes to amend ISE Rule 705 in order to establish limits with respect to compensating Members, both in the ISE's stock and options markets, as a result of a malfunction of the Exchange's physical equipment, devices, and/or programming.

Under the proposed rule change, payments for any and all system failures on any given day would be capped at \$250,000. That is, for the aggregate of all claims made by all market participants related to the use of the Exchange on a single trading day, the Exchange's payment shall not exceed \$250,000. In the event that all of the claims arising out of the use of the Exchange's systems cannot be fully satisfied because in the aggregate they exceed the limitations provided for in the Rule, then the maximum permitted amount will be proportionally allocated among all such claims arising on a single trading day. A system failure will be deemed to have occurred when there is a malfunction of the Exchange's physical systems, devices, or software.

In order for a Member to be eligible to receive payment, claims must be made in writing and must be submitted no later than the opening of trading on the next business day following the day on which the incident giving rise to a claim occurred. Once in receipt of a claim, the Exchange will verify that: (i) a valid order was accepted into the Exchange's systems; and (ii) an Exchange system failure occurred during the execution or handling of that order. If all of the criteria for submitting a claim have been met, the claim will be qualified for processing with all other eligible claims at the end of the calendar month in which the incident occurred.

##### **2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>4</sup>

<sup>3</sup> The ISE represents that the determination as to whether a Member is compensated or not will be made on an equitable and non-discriminatory basis without regard to the status of that Member, i.e., whether that Member is a Primary Market Maker, a Competitive Market Maker, or an Electronic Access Member of the Exchange.

<sup>4</sup> 15 U.S.C. 78f.

<sup>1</sup> 17 CFR 200.30-3(a)(12).

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

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