

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61540; File No. SR-FINRA-2009-081)

February 18, 2010

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change to Adopt FINRA Rule 2261 (Disclosure of Financial Condition) in the Consolidated FINRA Rulebook

On November 18, 2009, the Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt FINRA Rule 2261 (Disclosure of Financial Condition) in the Consolidated FINRA Rulebook. The proposed rule change was published for comment in the Federal Register on January 5, 2010.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

As part of the process of developing a new consolidated rulebook (“Consolidated FINRA Rulebook”),⁴ FINRA proposed adopting NASD Rule 2270 (Disclosure of Financial Condition to Customers) and NASD Rule 2910 (Disclosure of Financial Condition to Other Members), subject to certain amendments, as FINRA Rule 2261 in the Consolidated FINRA Rulebook.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act of 1934 Release No. 61253 (December 29, 2009), 75 FR 0475.

⁴ The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (“Incorporated NYSE Rules”) (together, the NASD Rules and Incorporated NYSE Rules are referred to as the “Transitional Rulebook”). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (“Dual Members”). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see Information Notice, March 12, 2008 (Rulebook Consolidation Process).

NASD Rule 2270 requires members to make available for inspection, upon the request of any bona fide regular customer,⁵ the information relative to such member's financial condition as disclosed in its most recent balance sheet prepared either in accordance with such member's usual practice or as required by any state or federal securities laws, or any rule or regulation thereunder.

FINRA proposed amending the requirements of NASD Rule 2270 to provide an alternative means of satisfying the requirement that members make balance sheet information available to bona fide regular customers. Currently, the rule requires that members "make available to inspection by any bona fide regular customer, upon request, the information relative to such member's financial condition as disclosed in its most recent balance sheet" FINRA proposed providing members with the option of delivering their balance sheet, in paper or electronic form, to customers who request it. With respect to electronic delivery, the requesting customer must consent to receive the balance sheet in electronic form to ensure that such information is accessible to the customer. FINRA did not propose requiring members to deliver their balance sheet to all customers (instead of making them available to inspection or delivering them upon request) because Rule 17a-5(c) under the Act⁶ generally requires a broker-dealer that carries customer accounts to send its full balance sheet and certain other financial information to each of its customers twice a year.⁷ NASD Rule 2270 provides customers with additional access

⁵ For purposes of the rule, "customer" means any person who, in the regular course of such member's business, has cash or securities in the possession of such member.

⁶ 17 CFR 240.17a-5(c).

⁷ SEC Rule 17a-5(c)(5) contains a conditional exemption from the requirement that broker-dealers semi-annually send customers a full balance sheet. Under the exemption, a broker-dealer can semi-annually send its customers summary information regarding its net capital, as long as it also provides customers with a toll-free number to call for a free copy of its full balance sheet, makes its full balance sheet available to customers on its website, and meets other specified

to their broker's balance sheet information by requiring that members permit customers to inspect or obtain a copy of a member's most recent balance sheet at any time upon request.

NASD Rule 2910 requires any member that is a party to an open transaction or who has on deposit cash or securities of another member to furnish, upon the written request of the other member, a statement of its financial condition as disclosed in its most recently prepared balance sheet. FINRA proposed amending the provisions of NASD Rule 2910 to require, consistent with NASD Rule 2270, that members provide to other members the balance sheet that was "prepared either in accordance with such member's usual practice or as required by any state or federal securities laws, or any rule or regulation thereunder." In addition, FINRA proposed that members be permitted to provide their balance sheet to other members in paper or electronic form. However, unlike the proposed amendments to NASD Rule 2270, FINRA did not propose requiring members to obtain the consent of other members to electronically deliver the balance sheet. FINRA believes that other members, unlike all customers, will be equipped to receive electronic delivery.

FINRA believes that the requirements of NASD Rule 2270 and NASD Rule 2910 continue to provide access to important information by allowing customers and other members to have access to a copy of a member's most recent balance sheet at any time upon request and should be transferred, as amended, to the Consolidated FINRA Rulebook as FINRA Rule 2261.

FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice to be published no later than 90 days following Commission approval.

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

requirements. See Securities Exchange Act Release No. 48272 (August 1, 2003), 68 FR 46446 (August 6, 2003).

association.⁸ In particular, the Commission finds that the proposal is consistent with Section 15A(b)(6) of the Act,⁹ which requires, among other things, that FINRA's rules 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. The Commission believes that the proposed rule change will further the purposes of the Act by, among other things, ensuring that basic, current information regarding the financial condition of members with which customers and other members conduct business is available upon request. The Commission therefore believes that it is appropriate and consistent with the Act for FINRA to Adopt FINRA Rule 2261 (Disclosure of Financial Condition) in the Consolidated FINRA Rulebook.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-FINRA-2009-081) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon
Deputy Secretary

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

⁹ 15 U.S.C. 78o-3(b)(6).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).