

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58754; File No. SR-FINRA-2008-049)

October 8, 2008

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to UPC Advisory on Trading Halts in OTC Equity Securities

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 October 7, 2008, the Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(1) thereunder,⁴ 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 filing a Uniform Practice Code (UPC) Advisory that provides notice that FINRA will halt trading in OTC Equity Securities under FINRA Rule 6460(a)(3) (formerly NASD Rule 6660(a)(3)) if there is a market-wide halt in trading in NMS stocks.⁵

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)(1).

⁵ On September 25, 2008, the SEC approved proposed rule change SR-FINRA-2008-021, in which FINRA proposed, among other things, to adopt the NASD Marketplace Rules

The text of the proposed UPC Advisory is attached as Exhibit 1. There are no changes to the text of FINRA rules.

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

National securities exchanges generally have circuit breaker rules whereby the trading in all exchange-listed securities is halted based on a one-day decline of 10%, 20% and 30% of the Dow Jones Industrial Average (“DJIA”), with the percentage value based on the average closing value of the DJIA for the month prior to the beginning of the quarter, or have other general authority to halt trading in response to similar extraordinary market conditions.⁶ Unlike the exchanges, with respect to OTC Equity Securities (as that term is defined in the FINRA Rule 6400 Series (formerly NASD Rule 6600 Series)), FINRA does not have an express circuit

(the NASD Rule 4000 through 7000 Series) as the FINRA Rule 6000 through 7000 Series in the Consolidated FINRA Rulebook. See Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (Order Approving SR-FINRA-2008-021; SR-FINRA-2008-022; SR-FINRA-2008-026; SR-FINRA-2008-028 and SR-FINRA-2008-029). As part of that proposed rule change, FINRA adopted the provisions of NASD Rule 6660 as new FINRA Rule 6460 relating to trading and quotation halts in OTC Equity Securities.

⁶ See, e.g., NYSE Rule 80B, NYSE Arca Equities Rule 7.12 and NASDAQ Exchange Rule 4121.

breaker rule but relies on its authority under FINRA Rule 6460(a)(3) (formerly NASD Rule 6660(a)(3)), which provides that FINRA may halt quoting and trading in OTC equity securities if FINRA determines that an extraordinary event has occurred or is ongoing that has had a material effect on the market for the OTC Equity Security or has caused or has the potential to cause major disruption to the marketplace and/or significant uncertainty in the settlement and clearance process. FINRA considers a market-wide halt in the trading of exchange-listed securities to be an extraordinary event under Rule 6460(a)(3) and has therefore published a UPC Advisory (attached as Exhibit 1) to give notice to members and other interested parties that FINRA will halt quoting and trading in OTC Equity Securities under these circumstances.

FINRA has filed the proposed rule change for immediate effectiveness and it is operative on the date of filing.

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 is consistent with the circuit breaker rules of other SROs and will further the goal of investor protection by providing a coordinated means to address potentially destabilizing market volatility.

⁷ 15 U.S.C. 78o-3(b)(6).

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

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act⁸ and paragraph (f)(1) of Rule 19b-4 thereunder,⁹ in that the proposed rule change is a stated policy, practice or interpretation with respect to the meaning, administration or enforcement of an existing rule. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2008-049 on the subject line.

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(1).

Paper Comments:

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

All submissions should refer to File Number SR-FINRA-2008-049. 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, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make

available publicly. All submissions should refer to File Number SR-FINRA-2008-049 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
Acting Secretary

¹⁰ 17 CFR 200.30-3(a)(12).

Exhibit 1

Attn: Trading and Market Making/Legal and Compliance/Operations/Systems

UNIFORM PRACTICE ADVISORY (UPC # XXX-2008) October 6, 2008
Exchange Circuit Breaker Declaration – FINRA OTC Equity Market Trigger

FINRA Rule 6460 (NASD Rule 6660)

Financial Industry Regulatory Authority, Inc. (FINRA) members are hereby provided notice that upon FINRA's receipt of actual notification (via the NMS consolidated data plans or otherwise) that a market-wide trading halt has been declared for NMS stocks, due to a percentage-based circuit breaker having been triggered, FINRA will exercise its authority under FINRA Rule 6460(a)(3) (NASD Rule 6660(a)(3)) to halt quoting and trading activity in the market for OTC Equity securities (as defined in the FINRA Rule 6400 Series (NASD Rule 6600 Series)).¹ Questions regarding this notice should be directed to: FINRA Operations, 866-776-0800.

¹ On September 25, 2008, the SEC approved proposed rule change SR-FINRA-2008-021, in which FINRA proposed, among other things, to adopt the NASD Marketplace Rules (the NASD Rule 4000 through 7000 Series) as the FINRA Rule 6000 through 7000 Series in the Consolidated FINRA Rulebook. See Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (Order Approving SR-FINRA-2008-021; SR-FINRA-2008-022; SR-FINRA-2008-026; SR-FINRA-2008-028 and SR-FINRA-2008-029). As part of that proposed rule change, FINRA adopted the provisions of NASD Rule 6660 as new FINRA Rule 6460 relating to trading and quotation halts in OTC Equity Securities.