

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60367; File No. SR-FINRA-2009-038)

July 22, 2009

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval Of Proposed Rule Change to Repeal Incorporated NYSE Rule 134 (Differences and Omissions – Cleared Transactions) and NYSE Rule 440I (Records of Compensation Arrangements – Floor Brokerage) as Part of the Process to Develop the Consolidated FINRA Rulebook

On June 1, 2009, 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”) a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder.² Notice of the proposal was published for comment in the Federal Register on June 15, 2009.³ The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

I. Description of the Proposal

As part of the process of developing a new consolidated rulebook (“Consolidated FINRA Rulebook”),⁴ FINRA proposed not to transfer from the Transitional Rulebook to

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Release No. 60070 (June 8, 2009), 74 FR 28302 (“Notice”).

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 FINRA Information Notice, March 12, 2008 (Rulebook Consolidation Process).

the FINRA Consolidated Rulebook two rules that are specific to the New York Stock Exchange LLC (“NYSE”) marketplace and relate primarily to activities by floor brokers. Specifically, FINRA proposed not to include in the Consolidated FINRA Rulebook NYSE Incorporated Rule 134 (Differences and Omissions – Cleared Transactions) and NYSE Incorporated Rule 440I (Records of Compensation Arrangements – Floor Brokerage).

As more fully described in the Notice, Incorporated NYSE Rule 134, sets forth procedures for clearing member firms to identify uncomparated transactions and resolve them by making any necessary additions, deletions or changes to their data through the facilities of the NYSE Correction System. Further, NYSE Rule 134(d) requires floor brokers to maintain or participate in an error account in which all bona fide error transactions are processed and recorded.

Incorporated NYSE Rule 440I also applies to floor brokers. As more fully described in the Notice, NYSE Rule 440I requires each member and member organization that is “primarily engaged as an agent in executing transactions on the Floor of the Exchange” to maintain certain records of compensation arrangements in excess of \$5,000 per year.

In the Notice, FINRA noted that the NYSE may choose to retain NYSE Rule 134 and Rule 440I for its own purposes. In addition, FINRA stated that it would announce the implementation date of the proposed rule change in a Regulatory Notice to be published no later than 90 days following Commission approval.

II. Discussion and Commission's Findings

After careful review of the proposal, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁵ 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.⁶ The Commission notes that Dual Members remain subject to both the Consolidated FINRA Rulebook and the NYSE Rulebook. Therefore, FINRA's proposal to repeal from the Transitional Rulebook two Incorporated NYSE Rules that are specific to the NYSE marketplace does not relieve Dual Members of their obligation to comply with rules retained by the NYSE.

III. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁷ that

⁵ 15 U.S.C. 78o-3(b)(6).

⁶ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78s(b)(2).

the proposed rule change (SR-FINRA-2009-038) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Florence E. Harmon
Deputy Secretary

⁸ 17 CFR 200.30-3(a)(12).