

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61338; File No. SR-FINRA-2009-084)

January 12, 2010

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change to Adopt FINRA Rule 5330 (Adjustment of Orders) in the Consolidated FINRA Rulebook

On November 24, 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 NASD Rule 3220 (Adjustment of Open Orders) as a FINRA rule in the consolidated FINRA rulebook with several changes and to renumber NASD Rule 3220 as FINRA Rule 5330 in the consolidated FINRA rulebook. The proposed rule change was published for comment in the Federal Register on December 8, 2009.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

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 association.⁴ In particular, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 61083 (December 1, 2009), 74 FR 64774.

⁴ 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).

⁵ 15 U.S.C. 78o-3(b)(6).

FINRA 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 is appropriate to continue to set forth how members are to adjust the terms of open orders when such orders involve a security that is subject to a dividend, payment, or distribution. The Commission notes that members will be prohibited from executing or permitting the execution of such open orders without first reconfirming the order with the customer when the value of a distribution cannot be determined. The Commission also notes that members will now be required to cancel all orders (both buy and sell), rather than just open orders, if a security is the subject of a reverse split. Members also will be required to notify a customer with a pending order that is not otherwise required to be adjusted under the rule when his or her order is the subject of a reverse split. The Commission believes that the proposed rule change will conform FINRA Rule 5330 with current trading practices, including the conversion from fractional to decimal trading increments. The Commission further believes that the proposed rule change will bring uniformity and harmonization to the treatment of open orders by conforming FINRA Rule 5330 with comparable rules of other self-regulatory organizations.⁶

⁶ See, e.g., Nasdaq Rule 4761 and NYSE-Arca Rule 7.39.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁷ that the proposed rule change (SR-FINRA-2009-084) 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

⁷ 15 U.S.C. 78s(b)(2)

⁸ 17 CFR 200.30-3(a)(12)