

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61473; File No. SR-FINRA-2009-087)

February 2, 2010

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change to Repeal NASD Rules 2760 and 2780, Incorporated NYSE Rules 2B and 411, and the Interpretation to Incorporated NYSE Rule 411(a)(ii)(5) as Part of the Process of Developing the Consolidated FINRA Rulebook

On December 4, 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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to repeal NASD Rule 2760 (Offerings “At the Market”), NASD Rule 2780 (Solicitation of Purchases on an Exchange to Facilitate a Distribution of Securities), Incorporated NYSE Rule 2B (No Affiliation between Exchange and any Member Organization), Incorporated NYSE Rule 411 (Erroneous Reports) and the Interpretation to Incorporated NYSE Rule 411(a)(ii)(5) as part of the process of developing a consolidated FINRA rulebook. The proposed rule change was published for comment in the Federal Register on December 29, 2009.<sup>3</sup> 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.<sup>4</sup> In particular, the Commission finds that the proposed rule change is consistent

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

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

<sup>3</sup> See Securities Exchange Act Release No. 61211 (December 18, 2009), 74 FR 68889. (“Notice”).

<sup>4</sup> 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).

with the provisions of Section 15A(b)(6) of the Act,<sup>5</sup> which requires, among other things, that 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 eliminate confusion and reduce regulatory overlap by repealing rules that are similar to federal rules and regulations or are specific to the NYSE and its marketplace. As further described in the Notice, FINRA stated that NASD Rule 2760 is similar to the Commission's Rule 15c1-8 under the Act,<sup>6</sup> which FINRA believes appropriately protects investors without duplication by NASD Rule 2760. FINRA also stated that NASD Rule 2780 duplicates the Commission's Rule 10b-2, which was rescinded by the Commission in 1993 because it was duplicative of other provisions of the federal securities laws, including the Commission's Regulation M.<sup>7</sup> Therefore, FINRA believes that NASD Rule 2780 should be deleted. In addition, FINRA stated that NYSE Rules 2B and 411 and the Interpretation to Incorporated NYSE Rule 411(a)(ii)(5) relate to activity that concerns solely the NYSE marketplace and, in the case of Rule 411(b)(2), is duplicative of existing Commission recordkeeping requirements. Thus, FINRA believes that these Incorporated NYSE Rules and Interpretation should not be included in the consolidated FINRA rulebook. In approving this proposed rule change, the Commission notes that FINRA members and their

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<sup>5</sup> 15 U.S.C. 78q-3(b)(6).

<sup>6</sup> 17 CFR 240.15c1-8.

<sup>7</sup> See Securities Exchange Act Release No. 32100 (April 2, 1993), 58 FR 18145 (April 8, 1993).

associated persons are required to comply with all applicable federal securities laws and that FINRA, as a self-regulatory organization, has the obligation to have the capacity to enforce compliance by its members and their associated persons with the Act and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> proposed rule change (SR-FINRA-2009-087) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12)