

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60306; File No. SR-FINRA-2009-035)

July 14, 2009

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change to Adopt its Temporary and Permanent Cease and Desist Authority on a Permanent Basis

On May 18, 2009, the Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a the 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 its rules regarding the issuance of issue temporary and permanent cease and desist orders on a permanent basis. The proposal was published for comment in the Federal Register on June 9, 2009.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

Since May 2003, pursuant to a pilot program approved by the Commission⁴ and subsequent extensions,⁵ FINRA has had the authority to issue temporary cease and desist orders

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 60028 (June 2, 2009), 74 FR 27364 (June 9, 2009)(“Notice”).

⁴ See Securities Exchange Act Release No. 47925 (May 23, 2003), 68 FR 33548 (June 4, 2003) (Order Approving File No. SR-NASD-98-80).

⁵ The extensions were filed for immediate effectiveness and were therefore not approved by the Commission. See Securities Exchange Act Release No. 51860 (June 16, 2005), 70 FR 36427 (June 23, 2005) (SR-NASD-2005-061); Securities Exchange Act Release No. 55819 (May 25, 2007), 72 FR 30895 (June 4, 2007) (SR-NASD-2007-033); and Securities Exchange Act Release No. 60035 (June 3, 2009), 74 FR 27360 (June 9, 2009) (SR-FINRA-2009-034).

(“TCDOs”);⁶ impose permanent cease and desist orders as a remedy in disciplinary cases; and enforce cease and desist orders. FINRA proposed to make the existing pilot program permanent.⁷

After careful review of the proposal, 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.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, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also believes that the proposed rule change is consistent with the provisions of Section 15A(b)(7) of the Act,¹⁰ which provides that FINRA members, or persons associated with its members, must be appropriately disciplined for violations of any provisions of the Act or FINRA’s rules.

The Commission believes that making the pilot program permanent will provide FINRA with a mechanism to take action in certain situations against a member or an associated person that is alleged to have engaged, or is engaging, in conduct that violates Commission, FINRA, or NASD rules, when such intervention is necessary in order to prevent likely significant dissipation or conversion of assets or other significant harm to investors before the underlying disciplinary

⁶ A TCDO is a preliminary order issued in connection with an underlying disciplinary proceeding that has been initiated or will be initiated immediately.

⁷ The rule filing does not make any substantive changes to the existing pilot program.

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

⁹ 15 U.S.C. 78o-3(b)(6).

¹⁰ 15 U.S.C. 78o-3(b)(7).

proceeding can be completed. At the same time, the Commission believes that FINRA's cease and desist provisions contain sufficient procedural protections to ensure that respondents have the opportunity for a fair hearing and, if applicable, review thereof. When it first sought cease and desist authority in 2003, FINRA said that it would use the authority sparingly and has, in fact, only used its authority once for a TCDO and once for a permanent cease and desist order.¹¹ FINRA stated in its Notice that if the proposal were adopted on a permanent basis, it would continue to use its cease and desist authority judiciously. The Commission expects that FINRA will continue to use this authority in an appropriate manner. The Commission believes it is reasonable and consistent with the Act for FINRA to adopt the cease and desist rules permanently to enable it to stop persons from engaging in securities transactions or conduct affecting the marketplace, in alleged violation of established rules, which is likely to cause harm to investors or would adversely affect the public interest if not addressed expeditiously.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-FINRA-2009-035), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Florence E. Harmon
Deputy Secretary

¹¹ See Notice for a more detailed description of the matter.

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).