

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61052; File No. SR-FINRA-2009-066)

November 23, 2009

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of Proposed Rule Change to Adopt FINRA Rule 2251 (Forwarding of Proxy and Other Issuer-Related Materials) in the Consolidated FINRA Rulebook

On October 2, 2009, Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) filed with the Securities and Exchange Commission (“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 to adopt without material change NASD Rule 2260 (Forwarding of Proxy and Other Materials) and NASD IM-2260 (Approved Rates of Reimbursement) in the consolidated FINRA rulebook.³ The proposed rule change would combine NASD Rule 2260 and NASD IM-2260 into a single rule that would be renumbered as FINRA Rule 2251 in the consolidated FINRA rulebook. Notice of the proposal was published for comment in the Federal Register on October 22, 2009.⁴ The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 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 Information Notice, March 12, 2008 (Rulebook Consolidation Process).

⁴ See Securities Exchange Act Release No. 60824 (Oct. 14, 2009), 74 FR 54610.

I. Description of the Proposal

NASD Rule 2260 sets forth certain requirements with respect to the transmission of proxy materials and other communications to beneficial owners of securities and the limited circumstances in which members are permitted to vote proxies without instructions from those beneficial owners. NASD IM-2260 regulates the reimbursement that members are entitled to receive in connection with forwarding proxy materials and other communications.

FINRA proposes to combine the two rules, without material change, into a single rule that would be renumbered as FINRA Rule 2251 in the consolidated FINRA rulebook.⁵ FINRA proposed making clarifying changes and other changes primarily to reflect the new formatting and terminology conventions of the consolidated FINRA rulebook.⁶ In addition, the proposed rule change would add language where appropriate to remind members that they are obligated to comply both with the FINRA rule and applicable Commission rules and/or guidance. With respect to NASD Rule 2260(c)(2)'s provisions allowing a member to give a proxy to vote any stock pursuant to the rules of "any national securities exchange to which the member is also responsible," proposed FINRA Rule 2251 would clarify that a "member may give a

⁵ NASD IM-2260 would be redesignated as Supplementary Material within proposed FINRA Rule 2251.

⁶ For example, the language in NASD Rule 2260(a) stating that a member "has an inherent duty" to forward materials would be revised to state that a member "shall" forward such materials. Further, the proposed rule change would move the footnoted provisions defining the terms "ERISA" and "state" to the rule text, and the footnoted provision regarding verification of investment advisers would be redesignated as Supplementary Material. The proposed rule change would also add internal cross-references within the rule.

proxy to vote any stock pursuant to the rules of any national securities exchange of which it is a member. . . .”

FINRA stated that it will 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, 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.⁷ In particular, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁸ 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.

The Commission believes that the proposed rule change will continue to provide FINRA members with guidance on the forwarding of proxy and other issuer-related materials, as well as applicable rates of reimbursement. The Commission notes that the consolidation of these rules does not result in any substantive changes to the existing requirements.

⁷ In approving this rule proposal, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78q-3(b)(6).

III. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-FINRA-2009-066) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Elizabeth M. Murphy
Secretary

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).