

SECURITIES AND EXCHANGE COMMISSION
(Release No. 59947; File No. SR-FINRA-2009-017)

May 20, 2009

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change to Adopt Incorporated NYSE Rule 406 (Designation of Accounts) as a FINRA Rule in the Consolidated FINRA Rulebook

I. Introduction

On March 26, 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 (“SEC” or “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 Incorporated NYSE Rule 406 (Designation of Accounts) as a FINRA rule in the consolidated FINRA rulebook (“Consolidated FINRA Rulebook”)³ with the minor changes discussed below. The proposed rule change was published in the Federal Register on April 16, 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 two sets of rules: (1) NASD Rules and (2) rules incorporated from NYSE (“Incorporated NYSE Rules”) (together referred to as the “Transitional Rulebook”). The Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (“Dual Members”). Dual members must also comply with NASD Rules. For more information about the rulebook consolidation process, see FINRA Information Notice, March 12, 2008 (“Rulebook Consolidation Process”).

⁴ See Exchange Act Release No. 59745 (April 10, 2009), 74 FR 17705 (April 16, 2009) (“notice” or “proposal”)

II. Description of the Proposed Rule Change

As part of the process of developing the Consolidated FINRA Rulebook,⁵ FINRA proposed to adopt Incorporated NYSE Rule 406, with minor changes, as renumbered FINRA Rule 3250 in the Consolidated FINRA Rulebook. Incorporated NYSE Rule 406 provides that no member organization shall carry an account on its books in the name of a person other than that of the customer, except that an account may be designated by a number or symbol, provided that the member has on file a written statement signed by the customer attesting to the ownership of such account. In effect, this rule establishes a general requirement that a member must hold each customer account in the customer's name, except that a member may identify a customer's account with a number or symbol, as long as the member maintains documentation identifying the customer.⁶ Currently, Incorporated NYSE Rule 406 applies only to Dual Members.

NYSE's enforcement of the rule has addressed, among other things, sales practice abuses such as co-mingling of funds, the failure to disclose ownership interests in accounts and unauthorized trading.⁷ In the notice, FINRA proposed to adopt Incorporated NYSE Rule 406 as FINRA Rule 3250, stating it believes that the rule will continue to be an important enforcement

⁵ See supra note 3.

⁶ Members are subject to additional requirements regarding customer accounts. See, e.g., Rule 17a-3(a)(9) under the Act (requiring records indicating the name and address of the beneficial owner of each cash and margin customer account). 17 CFR 240.17a-3(a)(9).

⁷ See, e.g., Robert S. Bartek, Exchange Hearing Panel Decision 73-60 (August 28, 1973); Jeffrey Alan Schultz, Exchange Hearing Panel Decision 82-23 (March 18, 1982); Kery Shane Hutner, Exchange Hearing Panel Decision 02-27 (January 31, 2002). See also NYSE Information Memo 78-80, Members' Accounts and Initiating Orders on the NYSE Floor (November 10, 1978) (addressing, among other things, NYSE Rule 406(1), now Rule 406).

tool and should be expanded to apply to the entire FINRA membership. In the notice, FINRA stated that Incorporated NYSE Rule 406 could provide members' customers with a level of anonymity within the member and with certain external relationships that they find useful, while still allowing customers' identities to be clearly known to members and available to regulators. In the proposal, FINRA indicated that Incorporated NYSE Rule 406 would be renumbered as FINRA Rule 3250 with minor changes to replace references to "member organization" or "organization" with the term "member."⁸

III. Discussion and Findings

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 that are applicable to a national securities associations,⁹ and in particular, with Section 15A(b)(6) of the Act,¹⁰ which requires, among other things, that FINRA's rules be designed to prevent fraudulent and manipulative practices, to promote just and equitable principles of trade, and in general, to protect investors and the public interest. FINRA's adoption of Incorporated NYSE Rule 406 as FINRA Rule 3250 in the Consolidated FINRA Rulebook, with the minor changes discussed above, will extend to all FINRA members the applicability of a rule that serves as an important tool to guard against behavior that may be manipulative and fraudulent and that may violate just and equitable principles of trade.

⁸ FINRA also 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.

⁹ 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).

¹⁰ 15 U.S.C. 78q-3(b)(6).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR-FINRA-2009-017) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Florence E. Harmon
Deputy Secretary

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).