

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-60560; File No. SR-FINRA-2009-045)

August 21, 2009

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change Relating to Transaction-Related Charges for Trade Reporting to the OTC Reporting Facility

On July 1, 2009, Financial Industry Regulatory Authority, Inc. (“FINRA”) 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 amend Rule 7710, OTC Reporting Facility. The proposed rule change clarifies the application of transaction-related charges for trade reporting to the OTC Reporting Facility (“ORF”) by deleting the reference to “OTC Equity Security” in Rule 7710 to clarify that, from March 5, 2007, until June 17, 2009,<sup>3</sup> the trade reporting charges imposed by the rule applied to trade reports in any security sent to the ORF that were not subject to comparison through the ORF. This change to the rule is necessary to correct an inadvertent mistake made in SR-NASD-2007-018.<sup>4</sup> In SR-NASD-2007-018, FINRA deleted a catch-all phrase from Rule 7010(g) which had the effect of excluding from the rule securities such as PORTAL equity securities, which are specifically excluded from the definition of OTC Equity Security. On June 17, 2009, FINRA filed SR-FINRA-2009-043<sup>5</sup> to correct this mistake prospectively. The change made in the

---

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

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

<sup>3</sup> March 5, 2007, is the effective date for SR-NASD-2007-018 infra and June 17, 2009 is the effective date for SR-FINRA-2009-043.

<sup>4</sup> See Securities Exchange Act Release No. 55538 (March 27, 2007), 72 FR 15924 (April 3, 2007).

<sup>5</sup> See Securities Exchange Act Release No. 60168 (June 24, 2009), 74 FR 31471 (July 1, 2009).

instant rule filing corrects the mistake for the period from March 5, 2007 until June 17, 2009, the date of effectiveness of SR-FINRA-2009-043.

The proposed rule change was published for comment in the Federal Register on July 13, 2009.<sup>6</sup> The Commission received no comments on 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.<sup>7</sup> In particular, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>8</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 does not raise any novel issues; it is merely designed to accurately reflect FINRA's intent when it filed SR-NASD-2007-018,<sup>9</sup> as well as its members' understanding of the coverage of the rule. The proposal clarifies that the charges that FINRA assessed with respect to transactions that were reported to the ORF from March 5, 2007, until June 17, 2009 are consistent with FINRA's intent when it filed SR-NASD-2007-018.

---

<sup>6</sup> See Securities Exchange Act Release No. 60239 (July 2, 2009), 74 FR 33492.

<sup>7</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78o-3(b)(6).

<sup>9</sup> See footnote 4, supra.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act<sup>10</sup>, that the proposed rule change (SR-FINRA-2009-045) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

Florence E. Harmon  
Deputy Secretary

---

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).