

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60613; File No. SR-FINRA-2009-055)

September 2, 2009

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Adopt FINRA Rules 5210 (Publication of Transactions and Quotations) and 5220 (Offers at Stated Prices) into the Consolidated Rulebook

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 18, 2009, 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”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt NASD Rule 3310 (Publication of Transactions and Quotations), NASD Rule 3320 (Offers at Stated Prices), IM-3310 (Manipulative and Deceptive Quotations) and IM-3320 (Firmness of Quotations) as FINRA rules in the consolidated FINRA rulebook without material changes. The proposed rule change would combine NASD Rule 3310 and IM-3310 into FINRA Rule 5210 and would combine NASD Rule 3320 and IM-3320 into FINRA Rule 5220 in the consolidated FINRA rulebook.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),³ FINRA is proposing to adopt NASD Rule 3310 (Publication of Transactions and Quotations), NASD Rule 3320 (Offers at Stated Prices), IM-3310 (Manipulative and Deceptive Quotations) and IM-3320 (Firmness of Quotations) with minor changes as FINRA rules in the Consolidated FINRA Rulebook.

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).

Proposed FINRA Rule 5210

NASD Rule 3310 prohibits members from publishing or circulating, or causing to be published or circulated, any communication that purports to report any transaction as a purchase or sale of any security unless such member believes that such transaction was a bona fide purchase or sale of such security. The rule also prohibits members from publishing or circulating, or causing to be published or circulated, any communication that purports to quote the bid price or asked price for any security, unless such member believes that such quotation represents a bona fide bid for, or offer of, such security.

IM-3310 provides that it would be inconsistent with NASD Rules 2110 (Standards of Commercial Honor and Principles of Trade),⁴ 3310 (Publications of Transactions and Quotations), and 2120 (Use of Manipulative, Deceptive or Other Fraudulent Devices)⁵ for a member to: (1) publish or circulate or cause to be published or circulated, by any means whatsoever, any report of any securities transaction or of any purchase or sale of any security unless such member knows or has reason to believe that such transaction was a bona fide transaction, purchase or sale, or (2) to publish or circulate or to cause to be published or circulated, by any means whatsoever, any quotation for any security without having reasonable cause to believe that such quotation is a bona fide quotation, is not fictitious and is not published or circulated or caused to be published or circulated for any fraudulent, deceptive or manipulative purpose.

⁴ NASD Rule 2110 has been transferred into the Consolidated FINRA Rulebook as FINRA Rule 2010.

⁵ NASD Rule 2120 has been transferred into the Consolidated FINRA Rulebook as FINRA Rule 2020.

NASD Rule 3310 was adopted on June 6, 1939, and there have been no subsequent amendments to the rule. IM-3310 was adopted in 1960 and also has not been amended since adoption. More recently, FINRA reminded members that directly enter (or that permit customers or non-members to enter) orders into trading systems that they are required to take steps to ensure that such orders are free of errors and are representative of bona fide transaction and quotation activity consistent with their obligations under NASD Rule 3310 and IM-3310.⁶ Therefore, members have been reminded that they must have in place a supervisory system and written supervisory procedures reasonably designed to ensure that orders are not entered in error or in a manner inconsistent with FINRA rules, including NASD Rule 3310 and IM-3310.

FINRA is proposing to adopt the requirements set forth in NASD Rule 3310 and IM-3310 as FINRA Rule 5210 with minor changes to update the content and cross-references. Specifically, FINRA is proposing minor changes to delete the exception for nominal quotations that are clearly identified as such because, under current practice, nominal quotations are not published and a modifier does not exist to identify nominal quotations. In addition, FINRA is proposing to incorporate the substance of IM-3310 as Supplementary Material to FINRA Rule 5210 with minor changes to simplify and update the cross-references within the rule.⁷

⁶ See Notice to Members 04-66 (NASD Reminds Member Firms of Their Obligations to Ensure the Accuracy and Integrity of Information Entered into Order-Routing and Execution Systems) (September 2004).

⁷ As stated in SR-FINRA-2008-021, with the exception of the Arbitration Code, the Consolidated FINRA Rulebook will no longer contain Interpretive Materials (“IMs”); rather, the IMs either will become stand alone rules or will be integrated into existing rule text or moved to a “Supplementary Material” section at the end of a rule. (In some instances, an IM also may be eliminated as outdated or otherwise unnecessary.) The “Supplementary Material” will set forth the same type of legally binding guidance and additional information that IMs provide today and will be filed with the SEC. See Securities Exchange Act Release No. 58176 (July 16, 2008); 73 FR 42845 (July 23, 2008).

Proposed FINRA Rule 5220

NASD Rule 3320 provides that no member shall make an offer to buy from or sell to any person any security at a stated price unless such member is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell. NASD Rule 3320 was adopted on June 6, 1939. There have been no subsequent amendments to the rule.

As adopted in 1965, related IM-3320 restricts “backing away” from quotations, which disrupts the normal operation of the over-the-counter market. IM-3320 provides that it shall be deemed conduct inconsistent with high standards of commercial honor and just and equitable principles of trade if a member “backs away” from its quotation.

In addition, the interpretive material provides that, in order to ensure the integrity of quotations, every member has an obligation to correctly identify the nature of its quotations when they are supplied to others. Further, each member furnishing quotations must ensure that it is adequately staffed to respond to inquiries during the normal business hours of such member. IM-3320 recognizes that members change inter-dealer quotations constantly in the course of trading, but further states that, under normal circumstances where the member is making a firm trading market in any security, it is expected at least to buy or sell a normal unit of trading in the quoted stock at its then prevailing quotations unless clearly designated as “not firm” or “firm for less than a normal unit of trading” when supplied by the member. In addition, IM-3320 recognizes that a member’s quote may not be firm at times where contemporaneous transactions or substantial changes in inventory might require dealers to quote a “subject market” temporarily.

FINRA proposes to adopt NASD Rule 3320, without change, into the Consolidated FINRA Rulebook as FINRA Rule 5220 and to incorporate the substance of IM-3320, with minor changes, as Supplementary Material to FINRA Rule 5220. The minor changes to IM-3320 will: (1) update terminology (e.g., references to “wire quotations” and the “National Quotation Bureau Sheets”) to reflect technological advancements and current practice since the rule’s enactment, and (2) update the “subject market” language to make it consistent with the language used in the SEC’s Firm Quote Rule (Rule 602 of Regulation NMS), specifically that, if at the time an order for the purchase or sale of the quoted security is presented the member is in the process of effecting a transaction and immediately after the completion of such transaction communicates a revised quotation size, such member shall not be obligated to purchase or sell the quoted security in an amount greater than such revised quotation size.

FINRA 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.

2. Statutory Basis

FINRA believes 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. FINRA believes that adopting the proposed rules as part of the Consolidated FINRA Rulebook will continue to enhance market quality by providing for increased reliability and usefulness of quotation information. FINRA notes that the proposed rules have been in operation for numerous decades and believes that they have since proven effective in achieving the statutory mandates.

⁸ 15 U.S.C. 78o-3(b)(6).

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2009-055 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and

Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2009-055. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that

you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2009-055 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Florence E. Harmon
Deputy Secretary

⁹ 17 CFR 200.30-3(a)(12).