

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61071; File No. SR-FINRA-2009-067)

November 30, 2009

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change to Adopt FINRA Rules 2060 (Use of Information Obtained in Fiduciary Capacity) and 5290 (Order Entry and Execution Practices) in the Consolidated FINRA Rulebook

On October 6, 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 (“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 adopt NASD Rules 3120 (Use of Information Obtained in Fiduciary Capacity) and 3380 (Order Entry and Execution Practices) as FINRA rules in the consolidated FINRA rulebook without material change. The proposed rule change would renumber NASD Rule 3120 as FINRA Rule 2060 and NASD Rule 3380 as FINRA Rule 5290 in the consolidated FINRA rulebook. The proposed rule change was published for comment in the Federal Register on October 28, 2009.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

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>4</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>5</sup> which requires, among other things, that

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

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

<sup>3</sup> See Securities Exchange Act Release No. 60850 (October 21, 2009), 74 FR 55598.

<sup>4</sup> 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).

<sup>5</sup> 15 U.S.C. 78q-3(b)(6).

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 is appropriate to continue to prohibit members who, in the capacity of a paying agent, transfer agent, trustee, or in any other similar capacity, have received information as to the ownership of securities, from using such information for the purpose of soliciting purchases, sales or exchanges except at the request and on behalf of the issuer. The Commission also believes that the proposed rule change is appropriate to continue to prohibit conduct that has the intent or effect of splitting orders into multiple smaller orders for execution or any execution into multiple smaller executions for transaction reporting for the primary purpose of maximizing a monetary or in-kind amount to be received by the member or associated person as a result of the execution of such orders or the transaction reporting of such executions. In approving the proposed rule change, the Commission notes that FINRA is adopting NASD Rules 3120 and 3380 as FINRA rules in the consolidated FINRA rulebook without material changes.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>6</sup> that the proposed rule change (SR-FINRA-2009-067) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>6</sup> 15 U.S.C. 78s(b)(2)

<sup>7</sup> 17 CFR 200.30-3(a)(12)