

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61808; File No. SR-FINRA-2010-005)

March 31, 2010

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change to Repeal Incorporated NYSE Rule 405(4) (Common Sales Accounts)

On January 21, 2010, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act” or “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change. The proposed rule change was published for comment in the Federal Register on February 25, 2010.<sup>3</sup> The Commission received no comments on the proposed rule change.

I. Description of the Proposal

As part of the process of developing a new consolidated rulebook (“Consolidated FINRA Rulebook”),<sup>4</sup> FINRA proposed to repeal NYSE Rule 405(4) (Common Sales Accounts).<sup>5</sup>

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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 Exchange Act Release No. 61543 (February 18, 2010); 75 FR 8770 (February 25, 2010).

<sup>4</sup> The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from the New York Stock Exchange (“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

NYSE Rule 405(4) (Common Sales Accounts) required proper supervision of registered representatives handling common sales accounts. The rule provided that a member might facilitate the isolated liquidation of securities valued at \$1,000 or less registered in the name of an individual who does not have an account, and which are not part of any distribution, through a common sales account set up for the specific purpose of handling such sales. The rule further provided that such sales might be effected on behalf of the customer without requiring the member to send a periodic customer account statement to the individual as otherwise generally required, provided the following conditions were satisfied: (1) the customer was identified as the individual in whose name the securities are registered; (2) the securities were received by the member, at or prior to the time of the entry of the order, in the exact amount to be sold in good delivery form; (3) a confirmation was sent to the customer; (4) all proceeds of such sales were paid out on or immediately following settlement date; and (5) a record was made in the common sales account that includes certain customer-specific information.

FINRA believed that the rule as written might raise potential investor protection concerns. The term “isolated” was not defined.<sup>6</sup> Further, NYSE Rule 405(4) permitted a

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consolidation process, see Information Notice, March 12, 2008 (Rulebook Consolidation Process).

<sup>5</sup> For convenience, the Incorporated NYSE Rules are referred to as the “NYSE Rules.”

<sup>6</sup> NYSE Rule 405(4) was adopted by the NYSE in the late 1960’s. In 1977, the NYSE proposed amendments to Rule 405(4) to define the term “isolated” to mean “not exceeding five \$2,000 transactions during any twelve-month period unless otherwise approved by the NYSE,” and to allow unsolicited purchases as well as sales of securities. In late 1977, the SEC instituted proceedings to determine whether to disapprove the proposed rule change and identified the potential

member to effect sales of securities for customers without expressly requiring prior customer consent and without the need to send periodic account statements to the customer. For these reasons, FINRA proposed to eliminate NYSE Rule 405(4) and not adopt its content into the Consolidated FINRA Rulebook.<sup>7</sup>

## II. Discussion

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.<sup>8</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,<sup>9</sup> in that it is

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grounds for disapproval. See Securities Exchange Act Release No. 14143 (November 7, 1977) (Order Instituting Proceedings to Determine Whether Proposed Changes to Rule 405 Should be Disapproved; File No. SR-NYSE-76-34). The SEC expressed concern that “execution of such transactions, and in particular of purchases [as proposed], in the common purchase and sale account may permit opportunities for fraudulent and manipulative acts or practices[.]” In February 1978, the NYSE withdrew the filing. See Securities Exchange Act Release No. 14630 (April 3, 1978) (Order Approving Withdrawal of NYSE’s Proposed Changes to Rule 405; File No. SR-NYSE-76-34).

<sup>7</sup> FINRA notes that in the event a member may seek permission not to send customer account statements under certain limited circumstances, proposed FINRA Rule 2231, which relates to customer account statements, would authorize FINRA to exempt members from the provisions of such rule, including the requirement to deliver periodic account statements, pursuant to the Rule 9600 Series. See Securities Exchange Act Release No. 59921 (May 14, 2009); 74 FR 23912 (May 21, 2009) (Notice of Filing; File No. SR-FINRA-2009-028).

<sup>8</sup> In approving the proposed rule change, the Commission has considered the rule change’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78o-3(b)(6).

designed, among other things, to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest by eliminating a rule that contains terms that are not clearly defined and raises potential investor protection concerns.

### III. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-FINRA-2010-010) be and 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

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

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