

OMB APPROVAL

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. SR - 2010 - 028
Amendment No. 1

Proposed Rule Change by Financial Industry Regulatory Authority
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial ☐ Amendment ☒ Withdrawal ☐

Section 19(b)(2) ☒ Section 19(b)(3)(A) ☐ Section 19(b)(3)(B) ☐

Rule

Pilot ☐ Extension of Time Period
for Commission Action ☐ Date Expires

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Exhibit 2 Sent As Paper Document
☐

Exhibit 3 Sent As Paper Document
☐

Description

Provide a brief description of the proposed rule change (limit 250 characters).

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name Last Name
Title
E-mail
Telephone Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date

By
(Name)

Senior Vice President and Director of Capital Markets
Policy

(Title)

NOTE: Clicking the button at right will digitally sign and lock
this form. A digital signature is as legally binding as a physical
signature, and once signed, this form cannot be changed.

Stephanie Dumont,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

Form 19b-4 Information

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

On May 21, 2010, 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”) SR-FINRA-2010-028, a proposed rule change to adopt NASD Rule 3210 (Short Sale Delivery Requirements) as FINRA Rule 4320 in the consolidated FINRA rulebook.

FINRA is filing this Partial Amendment No. 1 to make several minor clarifications, provide additional detail, and make technical edits in the purpose section of SR-FINRA-2010-028.

Thus, on page 4 of 19 and pages 9 and 10 of 19 of the proposed rule change, FINRA is amending the below sentence as follows:

The Regulation SHO close-out requirements apply only to the equity securities of “reporting” [securities] issuers (i.e., issuers that are registered pursuant to Section 12 of the Act or that are required to file reports pursuant to Section 15(d) of the Act).

FINRA is not proposing any changes to the footnotes of this sentence.

On page 5 of 19 and pages 10 and 11 of 19 of the proposed rule change, FINRA is amending the below sentences as follows:

Pursuant to NASD Rule 3210, FINRA publishes a daily “Threshold Security List.” [“Threshold Securities List.”] The rule became effective on July 3, 2006. In adopting NASD Rule 3210, FINRA believed that the rule represented an important step in reducing long-term fails to deliver in this sector of the marketplace.

In July 2009, the SEC adopted the substance of temporary Rule 204T under Regulation SHO as a permanent rule, Rule 204 of Regulation SHO. This rule is intended to further the goal of reducing fails to deliver and addressing potentially abusive “naked” short selling in all equity securities by requiring the delivery of securities by settlement date or, in connection with a short sale, the immediate purchase or borrow of such securities to close out the fail to deliver position by no later than the beginning of regular trading hours on the following settlement day.

After the insertion of “T” following the first reference to “Rule 204” in the above sentence, FINRA is adding a new footnote citing to the Commission’s adopting release of temporary Rule 204T:

See Securities Exchange Act Release No. 58773 (October 14, 2008), 73 FR 61706 (October 17, 2008).

FINRA is not proposing any changes to the text of the existing footnote in this sentence.

On pages 5 and 6 of 19 and page 11 of 19 of the proposed rule change, FINRA is amending the below sentence as follows:

Notwithstanding the SEC's adoption of this new rule, proposed FINRA Rule 4320 continues to be necessary to provide regulatory coverage for fails to deliver in non-reporting over-the-counter equity securities that pre-exist the SEC's implementation of temporary Rule 204T in September 2008.

FINRA is amending the text of footnote number 8 on page 6 (and corresponding footnote number 9 on page 11) at the end of the above sentence as follows:

Likewise, the SEC is retaining Rule 203(b)(3) of Regulation SHO in order to cover pre-existing temporary Rule 204T fails in threshold securities as defined in Rule 203(c)(6) of Regulation SHO.

On page 6 of 19 and page 11 of 19 of the proposed rule change, FINRA is amending the below sentence as follows:

The proposed rule change also clarifies, consistent with Regulation SHO, [that when a participant closes out a fail-to-deliver-position by purchasing securities of like kind and quantity, that purchase must clear and settle at a registered clearing agency before short sale orders in such securities may be accepted.] the borrowing requirements for clearing agency participants, including broker-dealers for which they clear transactions, that sell short non-reporting threshold securities for which a fail to deliver position has not been closed out in the requisite time. Specifically, if a fail to deliver position is not closed out in accordance with Rule 4320(a), the clearing agency participant and any broker-dealer for which it clears, including market makers otherwise entitled to rely on the Rule 203(b)(2)(iii) exception of Regulation SHO, would not be able to short sell the non-reporting threshold security either for itself or for the account of another, unless it has previously arranged to borrow or borrowed the security, until the participant closes out the fail to deliver position by purchasing securities of like kind and quantity and that purchase has cleared and settled at a registered clearing agency.