

may designate, it has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup> At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission waive the 5-day pre-filing notice requirement and the 30-day operative delay of the proposal. The Commission believes that such waivers are consistent with the protection of investors and the public interest because the proposed rule change conforms CHX's rules to currently effective Commission Rules.<sup>13</sup> For this reason, the Commission designates the proposal to be operative upon filing with the Commission.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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](mailto:rule-comments@sec.gov). Please include File No. SR-CHX-2007-17 on the subject line.

##### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CHX-2007-17. 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 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. 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 No. SR-CHX-2007-17 and should be submitted on or before January 18, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**  
Deputy Secretary.

[FR Doc. E7-25189 Filed 12-27-07; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56972; File No. SR-NASD-2007-035]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc. (n/k/a/ Financial Industry Regulatory Authority, Inc.); Order Granting Approval of a Proposed Rule Change Related to Mandated Use of an Automated Liability Notification System

December 14, 2007.

#### I. Introduction

On May 25, 2007, the National Association of Securities Dealers, Inc. ("NASD")<sup>1</sup> filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>2</sup> Notice

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD's Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority, Inc. ("FINRA") in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. Exchange Act Release No. 56146 (July 26, 2007); 72 FR 42190 (Aug. 1, 2007).

<sup>2</sup> 15 U.S.C. 78s(b)(1).

of the proposal was published in the **Federal Register** on October 17, 2007.<sup>3</sup> For the reasons discussed below, the Commission is granting approval of the proposed rule change.

#### II. Description

NASD Rule 11810(i) sets forth the procedures that must be followed when a party is owed securities that have become the subject of a voluntary corporate action, such as a tender or exchange offer is seeking delivery of those securities. Under Rule 11810(i), the owed party delivers a liability notice to the owing or failing party. The liability notice sets a cut off date for the delivery of the securities by the owing party and provides notice to the owing party that it will be held liable for any damages caused by its failure to deliver the securities in time for the owed party to participate in the voluntary corporate action.

If the owing party delivers the securities in response to the liability notice, it has met its delivery obligation. If the owing party fails to deliver the securities in sufficient time for the owed party to participate in the voluntary corporate action, it will be liable for any damages that may accrue thereby (*i.e.*, the owing party must deliver proceeds equivalent to the proceeds that the owed party would have received if it had been able to participate in the offer). The owed party has the responsibility to communicate its intentions to the owing party and to prove, if necessary, that the owing party received the liability notice.

Prior to this proposed rule change, Rule 11810(i) required broker-dealers to send liability notices using "electronic media having immediate receipt capabilities." Although there was no one acceptable means for sending and tracking liability notices, NASD members advised the NASD that it was industry practice to send liability notices by fax. However, sending liability notices by fax is a manual, paper-intensive process that is subject to error. The financial risk to an owing firm that misses or incorrectly processes a liability notice relating to a voluntary corporate action can be considerable.

In response to industry need for a reliable and uniform method of transmitting liability notices, The Depository Trust Company ("DTC") developed the SMART/Track for Corporate Action Liability Notification Service ("SMART/Track"). SMART/Track is a web-based system for the communication of corporate action

<sup>3</sup> Securities Exchange Act Release No. 56639 (October 11, 2007), 72 FR 58918 (October 17, 2007) [File No. SR-NASD-2007-035].

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> For purposes only of waiving the 30 day pre-operative period, the Commission has considered the impact of the proposed rule change on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

liability notices that allows DTC participants and National Securities Clearing Corporation clearing members to create, send, process, and tract such notices. Transmitting liability notices through SMART/Track eliminates paper liability notices and provides firms with an electronic, centralized system for the distribution, management and control of liability notices. Use of SMART/Track helps reduce the risks, costs, and delays resulting from missing or inaccurate information associated with paper corporate action liability notices. Specifically, provides participants with (1) more timely receipt and distribution of corporation action liability notifications, (2) a centralized system to manage and control all liability notifications on all issues, (3) immediate identification of the security affected by a corporate action liability notification, (4) detailed disclosure and clearer explanation of the terms and conditions of the corporate action, and (5) an audit trail with a complete record of actions taken regarding a liability notice.

As amended, NASD Rule 11810(i) mandates the use of the automated liability notification system of a registered clearing agency when the parties to a failed contract involving securities that have become the subject of a voluntary corporate action are both participant in a clearing agency that has an automated service for corporate action liability notices.<sup>4</sup> When either or both parties to such a contract are not participants in a registered clearing agency that has an automated service for corporate action liability notices, Rule 11810(i) continues to require the liability notice to be issued using written or comparable electronic media having immediate receipt capabilities.

NASD will announce the effective date of the proposed rule change in a "Notice to Members" that will be published no later than sixty days from the date of approval of this rule change. The NASD anticipates that the effective date of the rule change will be thirty days following publication of the Notice to Members announcing the Commission's approval.

### III. Discussion

Section 15A(b)(6) of the Act requires, among other things, that the rules of a securities association be designed to remove impediments to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the

public interest.<sup>5</sup> The proposed rule change is consistent with the provisions of the Act because by eliminating the use of paper corporate action liability notices and requiring the use of a registered clearing agency's automated service for corporate action liability notices where available, the proposed rule change should help reduce the risks, costs, and delays resulting from missing or inaccurate information associated with paper corporate action liability notices.

Accordingly, for the reasons stated above the Commission finds that the rule change, is consistent with FINRA's obligation under Section 15A(b)(6) of the Act to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 15A(b)(6) of the Act and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NASD-2007-035) be and hereby is approved.

For the Commission by the Division of Trading and Practices, pursuant to delegated authority.<sup>6</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-25179 Filed 12-27-07; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57010; File No. SR-FINRA-2007-020]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Create Exception to Principal Approval Requirements for Certain Filed Sales Material

December 20, 2007.

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> notice is hereby given that on November 1, 2007, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially 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 amend NASD Rule 2210 (Communications with the Public) to create an exception from the principal approval requirements for certain filed sales material. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

\* \* \* \* \*

### 2200. COMMUNICATIONS WITH CUSTOMERS AND THE PUBLIC

#### 2210. Communications With the Public

(a) No Change.

(b) Approval and Recordkeeping.

(1) Registered Principal Approval for Advertisements, Sales Literature and Independently Prepared Reprints

(A) A registered principal of the member must approve by signature or initial and date each advertisement, item of sales literature and independently prepared reprint before the earlier of its use or filing with NASD's Advertising Regulation Department ("Department").

(B) With respect to debt and equity securities that are the subject of research reports as that term is defined in Rule 472 of the New York Stock Exchange, [this requirement] *the requirements of paragraph (A)* may be met by the signature or initial of a supervisory analyst approved pursuant to Rule 344 of the New York Stock Exchange.

(C) A registered principal qualified to supervise security futures activities must approve by signature or initial and date each advertisement or item of sales literature concerning security futures.

(D) *The requirements of paragraph (A) shall not apply with regard to any advertisement, item of sales literature, or independently prepared reprint if, at the time that a member intends to publish or distribute it:*

<sup>4</sup> Currently DTC is the only registered clearing agency operating an automated corporate liability notification service.

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

<sup>6</sup> 17 CFR 200.30-3(a)(12).

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

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