

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS 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

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

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.

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend FINRA Rule 7470 to revise the criteria necessary to qualify for an exemption from the order recording and data transmission requirements in the Order Audit Trail System (“OATS”) Rules for manual orders.

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

7000. CLEARING, TRANSACTION AND ORDER DATA REQUIREMENTS, AND FACILITY CHARGES

* * * * *

7400. ORDER AUDIT TRAIL SYSTEM

* * * * *

7470. Exemption to the Order Recording and Data Transmission Requirements

(a) Pursuant to the Rule 9600 Series, the staff, for good cause shown after taking into consideration all relevant factors, may exempt, subject to specified terms and conditions, a member from the recording and order data transmission requirements of Rules 7440 and 7450, respectively, for manual orders, if such exemption is consistent

¹ 15 U.S.C. 78s(b)(1).

with the protection of investors and the public interest, and the member meets the following criteria:

(1) through (2) No Change.

(3) the member does not conduct any market making activities in Nasdaq Stock Market equity securities or OTC equity securities;

(4) through (5) No Change.

(b) through (c) No Change.

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change has been approved by the General Counsel of FINRA (or his officer designee) pursuant to delegated authority. No other action by FINRA is necessary for the filing of the proposed rule change.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of filing, such that FINRA can implement the proposed rule change immediately.

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

(a) Purpose

On September 28, 2005, the SEC approved amendments to the OATS Rules that, among other things, permitted FINRA to grant exemptive relief from the OATS reporting

requirements for manual orders.² The exemptive authority was broadened in 2006 to give FINRA the authority to exempt members from the OATS recording requirements, in addition to the reporting requirements.³ At a minimum, members must meet the following criteria to be eligible to request an exemption from the OATS recording and reporting requirements for manual orders: (1) the member and current control affiliates and associated persons of the member have not been subject within the last five years to any final disciplinary action, and within the last ten years to any disciplinary action involving fraud; (2) the member has annual revenues of less than \$2 million; (3) the member does not conduct any market making activities in Nasdaq Stock Market equity securities; (4) the member does not execute principal transactions with its customers (with limited exceptions for principal transactions executed pursuant to error corrections); and (5) the member does not conduct clearing or carrying activities for other firms.

In addition to the amendments to the exemptive provision in the OATS Rules in 2006, the SEC separately approved amendments to the OATS Rules to require members to record and report to OATS order information relating to OTC equity securities.⁴ The

² See Securities Exchange Act Release No. 52521 (September 28, 2005), 70 FR 57909 (October 4, 2005).

³ See Securities Exchange Act Release No. 53580 (March 30, 2006), 71 FR 17529 (April 6, 2006). In 2006, the exemptive provision was also relocated from NASD Rule 6955(d) to NASD Rule 6958. As of December 15, 2008, NASD Rule 6958 was renumbered as FINRA Rule 7470. See FINRA Regulatory Notice 08-57 (October 2008).

⁴ See Securities Exchange Act Release No. 54585 (October 10, 2006), 71 FR 61112 (October 17, 2006).

extension of the OATS requirements to OTC equity securities became effective on February 4, 2008.⁵

When the Commission approved the exemptive provision in the OATS Rules and the amendment extending FINRA's authority under that provision in 2006, the OATS Rules applied only to equity securities listed on the Nasdaq Stock Market. Consequently, at that time, one of the minimum criteria for a member to request an exemption from the OATS requirements, specifically the requirement that the member not conduct any market making activities, was limited to Nasdaq Stock Market equity securities. This requirement, similar to the other exemptive criteria such as the prohibition on principal transactions with customers and conducting clearing or carrying activities for other firms, reflects FINRA's conclusion that exemptive relief should only be available to members that conduct very limited types of trading activities.

When the OATS recording and reporting requirements were extended to OTC equity securities, the exemptive provision was not similarly extended to account for market-making activities in OTC equity securities. The proposed rule change would amend the minimum criteria to seek exemptive relief from the recording and reporting requirements of the OATS Rules for manual orders to require that a member not conduct any market making activities in OTC equity securities. The proposed rule change would make explicit that members that make a market in any security subject to the OATS Rules (Nasdaq Stock Market or OTC equity securities) are not eligible for exemptive relief under Rule 7470.

⁵ See Securities Exchange Act Release No. 55440 (March 9, 2007), 72 FR 12852 (March 19, 2007).

As noted in Item 2 of this filing, FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of filing, such that FINRA can implement the proposed rule change immediately.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁶ 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 the proposed rule change is consistent with the original intent of limiting eligibility for an exemption and furthering the goals of the FINRA's OATS by codifying that members that conduct market-making activities in any security subject to the OATS Rules are not eligible for exemptive relief under Rule 7470.

4. 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.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

⁶ 15 U.S.C. 78o-3(b)(6).

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The proposed rule change is effective upon filing pursuant to Section 19(b)(3) of the Act⁷ and paragraph (f)(6) of Rule 19b-4 thereunder,⁸ in that the proposed rule change does not significantly affect the protection of investors or the public interest; does not impose any significant burden on competition; and does not become operative for 30 days after filing.

FINRA requests that the Commission waive the requirement that the rule change, by its terms, not become operative for 30 days after the date of the filing as set forth in Rule 19b-4(f)(6)(iii).⁹ FINRA believes that it is important to correct and conform the OATS exemptive provisions as soon as possible to eliminate any confusion as to the criteria to be eligible for exemptive relief under Rule 7470. In accordance with Rule 19b-4,¹⁰ FINRA submitted written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

⁷ 15 U.S.C. 78s(b)(3).

⁸ 17 CFR 240.19b-4(f)(6).

⁹ 17 CFR 240.19b-4(f)(6)(iii).

¹⁰ 17 CFR 240.19b-4.

9. Exhibits

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-FINRA-2009-001)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Exemptive Criteria in FINRA Rule 7470

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 , 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. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission. 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 FINRA Rule 7470 to revise the criteria necessary to qualify for an exemption from the order recording and data transmission requirements in the Order Audit Trail System (“OATS”) Rules for manual orders.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

The text of the proposed rule change is available on FINRA's Web site at www.finra.org, at the principal office of FINRA and at the Commission's public reading 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

On September 28, 2005, the SEC approved amendments to the OATS Rules that, among other things, permitted FINRA to grant exemptive relief from the OATS reporting requirements for manual orders.⁴ The exemptive authority was broadened in 2006 to give FINRA the authority to exempt members from the OATS recording requirements, in addition to the reporting requirements.⁵ At a minimum, members must meet the following criteria to be eligible to request an exemption from the OATS recording and reporting requirements for manual orders: (1) the member and current control affiliates

⁴ See Securities Exchange Act Release No. 52521 (September 28, 2005), 70 FR 57909 (October 4, 2005).

⁵ See Securities Exchange Act Release No. 53580 (March 30, 2006), 71 FR 17529 (April 6, 2006). In 2006, the exemptive provision was also relocated from NASD Rule 6955(d) to NASD Rule 6958. As of December 15, 2008, NASD Rule 6958 was renumbered as FINRA Rule 7470. See FINRA Regulatory Notice 08-57 (October 2008).

and associated persons of the member have not been subject within the last five years to any final disciplinary action, and within the last ten years to any disciplinary action involving fraud; (2) the member has annual revenues of less than \$2 million; (3) the member does not conduct any market making activities in Nasdaq Stock Market equity securities; (4) the member does not execute principal transactions with its customers (with limited exceptions for principal transactions executed pursuant to error corrections); and (5) the member does not conduct clearing or carrying activities for other firms.

In addition to the amendments to the exemptive provision in the OATS Rules in 2006, the SEC separately approved amendments to the OATS Rules to require members to record and report to OATS order information relating to OTC equity securities.⁶ The extension of the OATS requirements to OTC equity securities became effective on February 4, 2008.⁷

When the Commission approved the exemptive provision in the OATS Rules and the amendment extending FINRA's authority under that provision in 2006, the OATS Rules applied only to equity securities listed on the Nasdaq Stock Market. Consequently, at that time, one of the minimum criteria for a member to request an exemption from the OATS requirements, specifically the requirement that the member not conduct any market making activities, was limited to Nasdaq Stock Market equity securities. This requirement, similar to the other exemptive criteria such as the prohibition on principal transactions with customers and conducting clearing or carrying activities for other firms,

⁶ See Securities Exchange Act Release No. 54585 (October 10, 2006), 71 FR 61112 (October 17, 2006).

⁷ See Securities Exchange Act Release No. 55440 (March 9, 2007), 72 FR 12852 (March 19, 2007).

reflects FINRA's conclusion that exemptive relief should only be available to members that conduct very limited types of trading activities.

When the OATS recording and reporting requirements were extended to OTC equity securities, the exemptive provision was not similarly extended to account for market-making activities in OTC equity securities. The proposed rule change would amend the minimum criteria to seek exemptive relief from the recording and reporting requirements of the OATS Rules for manual orders to require that a member not conduct any market making activities in OTC equity securities. The proposed rule change would make explicit that members that make a market in any security subject to the OATS Rules (Nasdaq Stock Market or OTC equity securities) are not eligible for exemptive relief under Rule 7470.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of filing, such that FINRA can implement the proposed rule change immediately.

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 the proposed rule change is consistent with the original intent of limiting eligibility for an exemption and furthering the goals of the FINRA's

⁸ 15 U.S.C. 78q-3(b)(6).

OATS by codifying that members that conduct market-making activities in any security subject to the OATS Rules are not eligible for exemptive relief under Rule 7470.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰ FINRA requests that the Commission waive the 30-day period for the proposed rule change to become operative, as set forth in Rule 19b-4(f)(6),¹¹ so that it can implement the proposed rule change immediately. FINRA believes that it is important to correct and conform the OATS exemptive provisions as soon as possible to eliminate any confusion as to the criteria to be eligible for exemptive relief under Rule 7470.

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6).

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.

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-2009-001 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-2009-001. 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 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-2009-001 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.¹²

Elizabeth M. Murphy

Secretary

¹² 17 CFR 200.30-3(a)(12).