

of Section 15A(b)(6) of the Act,<sup>7</sup> 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 will streamline and improve FINRA's rulebook by eliminating a rule that contains terms that are not clearly defined and may raise potential investor protection concerns.

#### *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**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

### **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](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2010-005 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-2010-005. 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 Web site viewing and printing 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-2010-005 and should be submitted on or before March 18, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-61540; File No. SR-FINRA-2009-081]

#### **Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Adopt FINRA Rule 2261 (Disclosure of Financial Condition) in the Consolidated FINRA Rulebook**

February 18, 2010.

On November 18, 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 FINRA Rule 2261 (Disclosure of Financial Condition) in the Consolidated FINRA Rulebook. The proposed rule change was published for comment in the **Federal Register** on January 5, 2010.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),<sup>4</sup> FINRA proposed adopting NASD Rule 2270 (Disclosure of Financial Condition to Customers) and NASD Rule 2910 (Disclosure of Financial Condition to Other Members), subject to certain amendments, as FINRA Rule 2261 in the Consolidated FINRA Rulebook.

NASD Rule 2270 requires members to make available for inspection, upon the request of any bona fide regular customer,<sup>5</sup> the information relative to such member's financial condition as disclosed in its most recent balance sheet prepared either in accordance

<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 of 1934 Release No. 61253 (December 29, 2009), 75 FR 0475.

<sup>4</sup> The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("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 consolidation process, see *Information Notice*, March 12, 2008 (Rulebook Consolidation Process).

<sup>5</sup> For purposes of the rule, "customer" means any person who, in the regular course of such member's business, has cash or securities in the possession of such member.

<sup>7</sup> 15 U.S.C. 78o-3(b)(6).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

with such member's usual practice or as required by any State or Federal securities laws, or any rule or regulation thereunder.

FINRA proposed amending the requirements of NASD Rule 2270 to provide an alternative means of satisfying the requirement that members make balance sheet information available to bona fide regular customers. Currently, the rule requires that members "make available to inspection by any bona fide regular customer, upon request, the information relative to such member's financial condition as disclosed in its most recent balance sheet \* \* \*." FINRA proposed providing members with the option of delivering their balance sheet, in paper or electronic form, to customers who request it. With respect to electronic delivery, the requesting customer must consent to receive the balance sheet in electronic form to ensure that such information is accessible to the customer. FINRA did not propose requiring members to deliver their balance sheet to all customers (instead of making them available to inspection or delivering them upon request) because Rule 17a-5(c) under the Act<sup>6</sup> generally requires a broker-dealer that carries customer accounts to send its full balance sheet and certain other financial information to each of its customers twice a year.<sup>7</sup> NASD Rule 2270 provides customers with additional access to their broker's balance sheet information by requiring that members permit customers to inspect or obtain a copy of a member's most recent balance sheet at any time upon request.

NASD Rule 2910 requires any member that is a party to an open transaction or who has on deposit cash or securities of another member to furnish, upon the written request of the other member, a statement of its financial condition as disclosed in its most recently prepared balance sheet. FINRA proposed amending the provisions of NASD Rule 2910 to require, consistent with NASD Rule 2270, that members provide to other members the balance sheet that was "prepared either in accordance with

such member's usual practice or as required by any State or Federal securities laws, or any rule or regulation thereunder." In addition, FINRA proposed that members be permitted to provide their balance sheet to other members in paper or electronic form. However, unlike the proposed amendments to NASD Rule 2270, FINRA did not propose requiring members to obtain the consent of other members to electronically deliver the balance sheet. FINRA believes that other members, unlike all customers, will be equipped to receive electronic delivery.

FINRA believes that the requirements of NASD Rule 2270 and NASD Rule 2910 continue to provide access to important information by allowing customers and other members to have access to a copy of a member's most recent balance sheet at any time upon request and should be transferred, as amended, to the Consolidated FINRA Rulebook as FINRA Rule 2261.

FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval.

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 proposal is consistent with Section 15A(b)(6) of the Act,<sup>9</sup> which requires, among other things, that FINRA's 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 will further the purposes of the Act by, among other things, ensuring that basic, current information regarding the financial condition of members with which customers and other members conduct business is available upon request. The Commission therefore believes that it is appropriate and consistent with the Act for FINRA to Adopt FINRA Rule 2261 (Disclosure of Financial Condition) in the Consolidated FINRA Rulebook.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-FINRA-2009-081) is approved.

<sup>8</sup> In approving this proposed rule change, the Commission has considered the proposed rule'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).

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

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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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61537; File No. SR-FINRA-2009-095]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Adopt FINRA Rule 3240 (Borrowing From or Lending to Customers) in the Consolidated FINRA Rulebook

February 18, 2010.

#### I. Introduction

On December 31, 2009, 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"), 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 Rule 2370 (Borrowing From or Lending to Customers) as FINRA Rule 3240 (Borrowing From or Lending to Customers) in the Consolidated FINRA Rulebook<sup>3</sup> with certain changes and to delete Incorporated NYSE Rules 352(e) (Limitations on Borrowing From or Lending to Customers), (f) (Loan Procedures) and (g). The proposed rule change would also add a Supplementary Material section regarding record retention requirements to proposed FINRA Rule 3240. The proposed rule change was published for comment in the **Federal Register** on January 12, 2010.<sup>4</sup> The Commission received no

<sup>11</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.

<sup>3</sup> The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("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 consolidation process, see *Information Notice*, March 12, 2008 (Rulebook Consolidation Process).

<sup>4</sup> See Securities Exchange Act Release No. 61302 (January 6, 2010), 75 FR 1672 (January 12, 2010).

<sup>6</sup> 17 CFR 240.17a-5(c).

<sup>7</sup> SEC Rule 17a-5(c)(5) contains a conditional exemption from the requirement that broker-dealers semi-annually send customers a full balance sheet. Under the exemption, a broker-dealer can semi-annually send its customers summary information regarding its net capital, as long as it also provides customers with a toll-free number to call for a free copy of its full balance sheet, makes its full balance sheet available to customers on its Web site, and meets other specified requirements. See Securities Exchange Act Release No. 48272 (August 1, 2003), 68 FR 46446 (August 6, 2003).