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FOUNDED 1866

January 28, 2009

Office of the Corporate Secretary-Admin.

Ms. Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

JAN 29 2009

FINRA
Notice to Members

Re: Regulatory Notice 08-80

Dear Ms. Asquith:

I am writing to comment on the rule proposals in Regulatory Notice 08-80 insofar as they apply to customer orders in foreign securities.

1. Definition of "non-U.S. traded security." Proposed Rule 5130(f) would deem a U.S. broker-dealer to have complied with the best execution requirements set forth in paragraphs (a) through (e) of the rule if a customer order is for a "non-U.S. traded security" and if the broker-dealer follows the procedures set forth in paragraph (f). To qualify as a "non-U.S. traded security," a security must both be issued by a foreign entity and there must be no quotations or indications of interest displayed in any "quotation medium" in the United States at the time the broker-dealer receives the order.

A. Relevance of ADR programs. Most foreign equity securities have their primary trading market in the issuer's home country, notwithstanding that the issuer (or a U.S. depository bank) may have established in the United States an American Depositary Receipt program based on the issuer's ordinary shares. It would be helpful if FINRA would clarify that the presence of an ADR program -- whether sponsored or unsponsored, and whether the ADRs trade on an U.S. exchange or in the "pink sheets" -- is irrelevant to the status of the issuer's ordinary shares as non-U.S. traded securities for purposes of the proposed rule.

B. Relevance of a quotation medium in the United States. The definition of "quotation medium" focuses on whether a system, publication or device regularly disseminates quotations of identified broker-dealers or is used by broker-dealers to make known to others their interest in transactions in a security. It is not clear to me how the availability of quotations or indications in the United States is relevant to the rule proposal's objectives. As the SEC recently observed, "third-party quotation systems have become increasingly global in scope such that the distinction between systems that distribute quotations primarily in the United States and those

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that distribute quotations primarily in foreign countries is no longer a meaningful or workable distinction because most third-party quotations systems no longer serve a primary location." SEC Release No. 34-58047 (June 27, 2008). U.S. broker-dealers currently advertise as part of their electronic trading services the availability of real-time home country quotations on foreign securities, and quotations and indications regarding foreign securities will undoubtedly continue to become more available in the United States as technology progresses and as U.S. investors continue to be interested in trading in foreign securities. Neither U.S. broker-dealers nor their customers can control the increasing availability of such quotations and indications, and it would be a mistake if the benefits of proposed paragraph (f) could be lost merely because such quotations and indications become more accessible.

Nor is it a sufficient limitation on the proposed definition that a quotation medium be "general[ly] circulat[ed] to brokers or dealers" or that it be "used by brokers or dealers." The distinction between a professional and a retail quotation medium is elusive at best and likely to become more so as quotations and indications on foreign securities continue to become more available.

The order-handling policies and procedures contemplated by proposed paragraph (f) will undoubtedly take into account the relevance of any quotations or indications that are available in the United States. I therefore recommend that proposed paragraph (f) apply to orders for all foreign securities whether or not quotations or indications are available in the United States. If FINRA is concerned that paragraph (f) should not apply to orders in securities of foreign companies that have significant contacts with the United States, it could specify that paragraph (f) would apply only to securities of "foreign private issuers" within the meaning of SEC Rule 3b-4(c).

2. Customer instructions regarding order handling. Paragraph .07 of the proposed supplementary material specifies that a broker-dealer is not required to make best execution determinations when it receives an "unsolicited" instruction from a customer to route the customer's order to a particular market for execution. In the case of foreign securities, I suggest that FINRA delete the reference to an instruction's being unsolicited. A broker-dealer and a customer may on the basis of long usage and course of dealing have concluded that the customer's orders for foreign securities are most effectively executed in the principal market for such securities in the issuer's home country. The customer should not be deprived of the broker-dealer's advice in this area, and the broker-dealer should not be required to guess under these circumstances whether it has "solicited" the customer to instruct that the order be executed in that market.

Alternatively, FINRA could make paragraph .07 available to a broker-dealer in all cases where a customer has instructed that an order be executed in a foreign security's principal market.



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Please let me know of any questions regarding these comments.

Very truly yours,

A handwritten signature in black ink, appearing to be "J. McLaughlin", written over the typed name.

Joseph McLaughlin

Enclosure