

OMB APPROVAL

OMB Number: 3235-0045
 Expires: June 30, 2010
 Estimated average burden
 hours per response.....38

Page 1 of 18

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

File No. SR - 2008 - 054
 Amendment No.

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).

Proposed Rule Change to Adopt FINRA Rule 5280 (Trading Ahead of Research Reports) in the Consolidated FINRA Rulebook

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 Philip Last Name Shaikun
 Title Associate Vice President and Associate General Counsel
 E-mail philip.shaikun@finra.org
 Telephone (202) 728-8451 Fax (202) 728-8264

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 10/29/2008

By Patrice Gliniecki
 (Name)

Senior Vice President and Deputy General Counsel

(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.

Patrice Gliniecki,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information

Add Remove View

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

Add Remove View

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

Add Remove View

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

Add Remove View

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

Add Remove View

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

Add Remove View

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

Add Remove View

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 adopt NASD Interpretive Material 2110-4 (Trading Ahead of Research Reports) as a FINRA rule, subject to certain amendments. The proposed rule change would renumber NASD IM-2110-4 as FINRA Rule 5280 in the consolidated FINRA Rulebook.

The text of the proposed rule change is attached as Exhibit 5 to this rule filing.

* * * * *

(b) Upon Commission approval and implementation of the proposed rule change, the corresponding NASD rule will be eliminated from the current FINRA rulebook.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

At its meeting on September 16, 2008, the FINRA Board of Governors authorized the filing of the proposed rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change.

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.

¹ 15 U.S.C. 78s(b)(1).

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

(a) Purpose

As part of the process of developing the new consolidated rulebook (“Consolidated FINRA Rulebook”),² FINRA is proposing to adopt in the Consolidated FINRA Rulebook NASD Interpretive Material (“IM”) 2110-4 (Trading Ahead of Research Reports) with certain modifications.

IM-2110-4 states that it is conduct inconsistent with just and equitable principles of trade for a member to establish or adjust an inventory position in an exchange-listed security traded over-the-counter or a derivative of such security in anticipation of the issuance of a research report on that security. The IM further recommends – but does not require – that firms establish policies and procedures to develop and implement effective internal controls to isolate specific information within research and other relevant departments so as to prevent the trading department from utilizing advance knowledge of the issuance of research reports. Those members that choose not to establish such procedures bear the burden to show that changes in inventory positions in advance of research reports were not purposeful.³

² The current FINRA rulebook includes, in addition to FINRA Rules, (1) NASD Rules and (2) 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”). For more information about the rulebook consolidation process, see FINRA [Information Notice](#), March 12, 2008 (Rulebook Consolidation Process).

³ Incorporated NYSE Rule Interpretation 401/01 includes aspects similar to IM-2110-4. FINRA deleted that Interpretation as part of an earlier filing to transfer NASD Rules 2110 (Standards of Commercial Honor and Principles of Trade) and

The proposed rule change would amend the IM in three respects. First, it would extend the application of the IM to cover inventory positions with respect to any security – including debt – or derivative thereof, irrespective of whether the security is exchange-listed. FINRA believes the purpose of the IM – to prevent the manipulation of the supply of a security for the benefit of a firm and to the detriment of investors – applies equally to inventory positions in non-exchange-listed securities.

Second, the proposed rule change would apply the rule only to circumstances where a member establishes or adjusts its inventory based on *non-public* advance knowledge of the content or timing of a research report in that security. As such, it would not be a violation of the rule for a member to increase or decrease inventory of a security based on publicly available information regarding the likely timing of a research report. By way of example, when a member's trading desk adjusts an inventory position in anticipation of a research report because of a publicly discernible trend that a member's report tends to follow an earnings announcement, the prohibitions of the rule would not be triggered. However, having knowledge of a publicly discernible trend is not a viable alternative basis for the member's trading desk to adjust its inventory position when the trading desk is also the recipient of *non-public* advance knowledge of the content or timing of a research report in that security.

2120 (Use of Manipulative, Deceptive or Other Fraudulent Devices) to the Consolidated FINRA Rulebook, as the conduct addressed in the Interpretation is subsumed by those rules. See Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (Order Approving SR-FINRA-2008-028).

Finally, the proposal would eliminate the option to establish internal controls to manage the flow of information between the research and trading departments and instead mandate that firms establish policies and procedures reasonably designed to restrict or limit the information flow between research department personnel, or other persons with knowledge of the content or timing of a research report, and trading department personnel, so as to prevent trading department personnel from utilizing non-public advance knowledge of the issuance or content of a research report for the benefit of the member or any other person.

FINRA believes that a member should have an affirmative obligation to manage conflicts of interest in its trading of securities. Moreover, this approach is more consistent with existing and proposed rules regarding supervision and the requirements of NASD Rule 2711 and NYSE Rule 472 to eliminate conflicts involving the publication and distribution of research reports.

As noted in Item 2 of this filing, 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.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁴ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote

⁴ 15 U.S.C. 78o-3(b)(6).

just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will protect the investing public by preventing firms from utilizing non-public advance knowledge of the timing or content of a research report to benefit its own trading to the detriment of its customers. The proposed rule change further would clarify and streamline NASD IM-2110-4 for adoption as a FINRA Rule in the new Consolidated FINRA Rulebook. NASD IM-2110-4 has previously been found to meet the statutory requirements, and FINRA believes that rule has since proven effective in achieving the statutory mandates.

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

FINRA does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.⁵

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

Not applicable.

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

⁵ 15 U.S.C. 78s(b)(2).

Not applicable.

9. Exhibits

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

Exhibit 5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-FINRA-2008-054)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Proposed Rule Change to Adopt FINRA Rule 5280 (Trading Ahead of Research Reports) in the Consolidated FINRA Rulebook

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. 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 adopt NASD Interpretive Material 2110-4 (Trading Ahead of Research Reports) as a FINRA rule, subject to certain amendments. The proposed rule change would renumber NASD IM-2110-4 as FINRA Rule 5280 in the consolidated FINRA Rulebook.

The text of the proposed rule change is attached as Exhibit 5.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

As part of the process of developing the new consolidated rulebook (“Consolidated FINRA Rulebook”),³ FINRA is proposing to adopt in the Consolidated FINRA Rulebook NASD Interpretive Material (“IM”) 2110-4 (Trading Ahead of Research Reports) with certain modifications.

IM-2110-4 states that it is conduct inconsistent with just and equitable principles of trade for a member to establish or adjust an inventory position in an exchange-listed security traded over-the-counter or a derivative of such security in anticipation of the issuance of a research report on that security. The IM further recommends – but does not require – that firms establish policies and procedures to develop and implement effective internal controls to isolate specific information within research and other relevant

³ The current FINRA rulebook includes, in addition to FINRA Rules, (1) NASD Rules and (2) 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”). For more information about the rulebook consolidation process, see FINRA Information Notice, March 12, 2008 (Rulebook Consolidation Process).

departments so as to prevent the trading department from utilizing advance knowledge of the issuance of research reports. Those members that choose not to establish such procedures bear the burden to show that changes in inventory positions in advance of research reports were not purposeful.⁴

The proposed rule change would amend the IM in three respects. First, it would extend the application of the IM to cover inventory positions with respect to any security – including debt – or derivative thereof, irrespective of whether the security is exchange-listed. FINRA believes the purpose of the IM – to prevent the manipulation of the supply of a security for the benefit of a firm and to the detriment of investors – applies equally to inventory positions in non-exchange-listed securities.

Second, the proposed rule change would apply the rule only to circumstances where a member establishes or adjusts its inventory based on *non-public* advance knowledge of the content or timing of a research report in that security. As such, it would not be a violation of the rule for a member to increase or decrease inventory of a security based on publicly available information regarding the likely timing of a research report. By way of example, when a member's trading desk adjusts an inventory position in anticipation of a research report because of a publicly discernible trend that a member's report tends to follow an earnings announcement, the prohibitions of the rule would not be triggered. However, having knowledge of a publicly discernible trend is

⁴ Incorporated NYSE Rule Interpretation 401/01 includes aspects similar to IM-2110-4. FINRA deleted that Interpretation as part of an earlier filing to transfer NASD Rules 2110 (Standards of Commercial Honor and Principles of Trade) and 2120 (Use of Manipulative, Deceptive or Other Fraudulent Devices) to the Consolidated FINRA Rulebook, as the conduct addressed in the Interpretation is subsumed by those rules. See Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (Order Approving SR-FINRA-2008-028).

not a viable alternative basis for the member's trading desk to adjust its inventory position when the trading desk is also the recipient of *non-public* advance knowledge of the content or timing of a research report in that security.

Finally, the proposal would eliminate the option to establish internal controls to manage the flow of information between the research and trading departments and instead mandate that firms establish policies and procedures reasonably designed to restrict or limit the information flow between research department personnel, or other persons with knowledge of the content or timing of a research report, and trading department personnel, so as to prevent trading department personnel from utilizing non-public advance knowledge of the issuance or content of a research report for the benefit of the member or any other person.

FINRA believes that a member should have an affirmative obligation to manage conflicts of interest in its trading of securities. Moreover, this approach is more consistent with existing and proposed rules regarding supervision and the requirements of NASD Rule 2711 and NYSE Rule 472 to eliminate conflicts involving the publication and distribution of research reports.

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.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁵ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote

⁵ 15 U.S.C. 78o-3(b)(6).

just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will protect the investing public by preventing firms from utilizing non-public advance knowledge of the timing or content of a research report to benefit its own trading to the detriment of its customers. The proposed rule change further would clarify and streamline NASD IM-2110-4 for adoption as a FINRA Rule in the new Consolidated FINRA Rulebook. NASD IM-2110-4 has previously have been found to meet the statutory requirements, and FINRA believes that rule has since proven effective in achieving the statutory mandates.

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. Please include File Number SR-FINRA-2008-054 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Florence Harmon, Acting Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2008-054. 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-2008-054 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.⁶

Florence Harmon
Acting Secretary

⁶ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

* * * * *

**Text of Proposed New FINRA Rule
(Marked to Show Changes from NASD IM-2110-4;
NASD IM-2110-4 to be Deleted in its Entirety from the Transitional Rulebook)**

* * * * *

5000. SECURITIES OFFERING AND TRADING STANDARDS AND PRACTICES

* * * * *

5200. QUOTATION AND TRADING OBLIGATIONS AND PRACTICES

* * * * *

[IM-2110-4]5280. Trading Ahead of Research Reports

[The Board of Governors, under its statutory obligation to protect investors and enhance market quality, is issuing an interpretation to the Rules regarding a member firm's trading activities that occur in anticipation of a firm's issuance of a research report regarding a security. The Board of Governors is concerned with activities of member firms that purposefully establish or adjust the firm's inventory position in an exchange-listed security traded otherwise than on an exchange or a derivative security based primarily on a specific exchange-listed security in anticipation of the issuance of a research report in that same security. For example, a firm's research department may prepare a research report recommending the purchase of a particular Nasdaq-listed security. Prior to the publication and dissemination of the report, however, the trading department of the member firm might purposefully accumulate a position in that security to meet anticipated customer demand for that security. After the firm had established its

position, the firm would issue the report, and thereafter fill customer orders from the member firm's inventory positions.]

[The Association believes that such activity is conduct that is inconsistent with just and equitable principles of trade, and not in the best interests of the investors. Thus, this interpretation prohibits a member from purposefully establishing, creating or changing the firm's inventory position in an exchange-listed security traded otherwise than on an exchange, or a derivative security related to the underlying equity security, in anticipation of the issuance of a research report regarding such security by the member firm.]

[In accordance with Article VII, Section 1(a)(ii) of the NASD By-Laws, the Association's Board of Governors has approved the following interpretation of Rule 2110:]

[Trading activity purposefully establishing, increasing, decreasing, or liquidating a position in an exchange-listed security traded otherwise than on an exchange or a derivative security based primarily upon a specific exchange-listed security, in anticipation of the issuance of a research report in that security, is inconsistent with just and equitable principles of trade and is a violation of Rule 2110.]

[For the purposes of this interpretation, a “purposeful” change in the firm's inventory position means any trading activities undertaken with the intent of altering a firm's position in a security in anticipation of accommodating investor interest once the research report has been published. Hence, the interpretation does not apply to changes in an inventory position related to unsolicited order flow from a firm's retail or

broker/dealer client base or to research done solely for in-house trading and not in any way used for external publication.]

[Under this interpretation, the Board recommends, but does not require, that member firms develop and implement policies and procedures to establish effective internal control systems and procedures that would isolate specific information within research and other relevant departments of the firm so as to prevent the trading department from utilizing the advance knowledge of the issuance of a research report. Firms that choose not to develop “Chinese Wall” procedures bear the burden of demonstrating that the basis for changes in inventory positions in advance of research reports was not purposeful.]

(a) No member shall establish, increase, decrease or liquidate an inventory position in a security or a derivative of such security based on non-public advance knowledge of the content or timing of a research report in that security.

(b) A member must establish, maintain and enforce policies and procedures reasonably designed to restrict or limit the information flow between research department personnel, or other persons with knowledge of the content or timing of a research report, and trading department personnel, so as to prevent trading department personnel from utilizing non-public advance knowledge of the issuance or content of a research report for the benefit of the member or any other person.

* * * * *