

OMB APPROVAL

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Page 1 of 14

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

File No. SR - 2009 - 086

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

☐ 19b-4(f)(1)	☐ 19b-4(f)(4)
☐ 19b-4(f)(2)	☐ 19b-4(f)(5)
☐ 19b-4(f)(3)	☐ 19b-4(f)(6)

Pilot	Extension of Time Period for Commission Action	Date Expires
☐	☐	

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 NASD Rule 2770 (Disclosure of Price in Selling Agreements) as FINRA Rule 5160 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	Erika	Last Name	Lazar
Title	Senior Attorney		
E-mail	erika.lazar@finra.org		
Telephone	(202) 728-8013	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 By
(Name)

(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.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS 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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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 Sent As Paper Document

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Exhibit 3 - Form, Report, or Questionnaire

Add

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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 Sent As Paper Document

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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

Add

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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 adopt NASD Rule 2770 (Disclosure of Price in Selling Agreements) as FINRA Rule 5160 in the consolidated FINRA rulebook without material change.

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

(b) Upon Commission approval and implementation by FINRA 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 July 16, 2009, 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.

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

(a) Purpose

¹ 15 U.S.C. 78s(b)(1).

As part of the process of developing a new consolidated rulebook (“Consolidated FINRA Rulebook”),² FINRA is proposing to adopt NASD Rule 2770 (Disclosure of Price in Selling Agreements), without material change, as FINRA Rule 5160.

NASD Rule 2770 requires certain disclosures in selling agreements.³ Specifically, the rule requires that selling syndicate agreements or selling group agreements⁴ (1) set forth the price at which securities are to be sold to the public or the formula by which such price can be ascertained and (2) state clearly to whom and under what circumstances concessions, if any, may be allowed.⁵

² 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).

³ Rule 2770, formerly designated as Section 7 in Article III of the Rules of Fair Practice, was adopted in 1939 as part of FINRA’s original rulebook. See Certificate of Incorporation and By-Laws, Rules of Fair Practice and Code of Procedure for Handling Trade Practice Complaints of National Association of Securities Dealers, Inc. (August 8, 1939). The precursor to NASD Rule 2770 was originally drafted by the Investment Bankers Code Committee in 1934. See Code Of Fair Competition For Investment Bankers With A Descriptive Analysis Of Its Fair Practice Provisions And A History Of Its Preparation (1934).

⁴ The terms “selling group” and “selling syndicate” are defined in NASD Rules 0120(p) and (q), respectively. (Other than to reflect the new conventions of the Consolidated FINRA Rulebook, FINRA does not propose to alter these two definitions, which will be addressed later in the rulebook consolidation process.)

⁵ Pursuant to FINRA Rule 0150, NASD Rule 2770 is applicable to transactions in, and business activities relating to, exempted securities, except municipal securities, conducted by members and associated persons.

It is customary industry practice that both of these items are contained in selling agreements. FINRA believes that these disclosures are important in ensuring the integrity of the public offering process. Specifically, the requirement to set forth the price at which the securities are to be sold to the public creates a contractual obligation among the selling group participants to offer the security to investors at the same price. The second requirement to set forth to whom and under what circumstances concessions, if any, are allowed gives the selling syndicate or selling group control over who may be compensated for participating in the offering.

NASD Rule 2770 has not been substantively amended since it was adopted in 1939. FINRA believes that Rule 2770's application and scope are clear and that the rule is achieving its intended purpose as part of FINRA's regulatory scheme governing member activity in securities offerings. FINRA proposes to transfer NASD Rule 2770 into the Consolidated FINRA Rulebook without material change as new FINRA Rule 5160. However, FINRA proposes one minor change to the title of the rule to clarify that in addition to disclosing the price of a security in an offering, selling agreements must also disclose concessions. The proposed title of FINRA Rule 5160 would be "Disclosure of Price and Concessions in Selling Agreements."

As noted above, 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,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 disclosures required by the proposed rule are important in ensuring the integrity of the public offering process. In addition, the rule being adopted as part of the Consolidated FINRA Rulebook previously has been found to meet the statutory requirements, and FINRA believes this 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.⁷

⁶ 15 U.S.C. 78o-3(b)(6).

⁷ 15 U.S.C. 78s(b)(2).

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**

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-2009-086

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Adopt FINRA Rule 5160 (Disclosure of Price and Concessions in Selling Agreements) 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”) 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 Rule 2770 (Disclosure of Price in Selling Agreements) as FINRA Rule 5160 in the consolidated FINRA rulebook without material change.

The text of the proposed rule change is available on FINRA’s Web site at <http://www.finra.org>, at the principal office of FINRA and at the Commission’s Public Reference Room.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 a new consolidated rulebook ("Consolidated FINRA Rulebook"),³ FINRA is proposing to adopt NASD Rule 2770 (Disclosure of Price in Selling Agreements), without material change, as FINRA Rule 5160.

NASD Rule 2770 requires certain disclosures in selling agreements.⁴

Specifically, the rule requires that selling syndicate agreements or selling group

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⁴ Rule 2770, formerly designated as Section 7 in Article III of the Rules of Fair Practice, was adopted in 1939 as part of FINRA's original rulebook. See Certificate of Incorporation and By-Laws, Rules of Fair Practice and Code of Procedure for Handling Trade Practice Complaints of National Association of Securities Dealers, Inc. (August 8, 1939). The precursor to NASD Rule 2770 was originally drafted by the Investment Bankers Code Committee in 1934. See Code Of Fair Competition For Investment Bankers With A Descriptive Analysis Of Its Fair Practice Provisions And A History Of Its Preparation (1934).

agreements⁵ (1) set forth the price at which securities are to be sold to the public or the formula by which such price can be ascertained and (2) state clearly to whom and under what circumstances concessions, if any, may be allowed.⁶

It is customary industry practice that both of these items are contained in selling agreements. FINRA believes that these disclosures are important in ensuring the integrity of the public offering process. Specifically, the requirement to set forth the price at which the securities are to be sold to the public creates a contractual obligation among the selling group participants to offer the security to investors at the same price. The second requirement to set forth to whom and under what circumstances concessions, if any, are allowed gives the selling syndicate or selling group control over who may be compensated for participating in the offering.

NASD Rule 2770 has not been substantively amended since it was adopted in 1939. FINRA believes that Rule 2770's application and scope are clear and that the rule is achieving its intended purpose as part of FINRA's regulatory scheme governing member activity in securities offerings. FINRA proposes to transfer NASD Rule 2770 into the Consolidated FINRA Rulebook without material change as new FINRA Rule 5160. However, FINRA proposes one minor change to the title of the rule to clarify that in addition to disclosing the price of a security in an offering, selling agreements must

⁵ The terms "selling group" and "selling syndicate" are defined in NASD Rules 0120(p) and (q), respectively. (Other than to reflect the new conventions of the Consolidated FINRA Rulebook, FINRA does not propose to alter these two definitions, which will be addressed later in the rulebook consolidation process.)

⁶ Pursuant to FINRA Rule 0150, NASD Rule 2770 is applicable to transactions in, and business activities relating to, exempted securities, except municipal securities, conducted by members and associated persons.

also disclose concessions. The proposed title of FINRA Rule 5160 would be “Disclosure of Price and Concessions in Selling Agreements.”

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,⁷ 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 disclosures required by the proposed rule are important in ensuring the integrity of the public offering process. In addition, the rule being adopted as part of the Consolidated FINRA Rulebook previously has been found to meet the statutory requirements, and FINRA believes this 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.

⁷ 15 U.S.C. 78o-3(b)(6).

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-2009-086 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-FINRA-2009-086. 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-2009-086 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.⁸

Florence E. Harmon

Deputy Secretary

⁸ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Exhibit 5 shows 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 Rule 2770; NASD Rule 2770 to be Deleted in
its Entirety from the Transitional Rulebook)**

* * * * *

**5000. SECURITIES OFFERING AND TRADING STANDARDS AND
PRACTICES**

* * * * *

5100. SECURITIES OFFERINGS, UNDERWRITING AND COMPENSATION

* * * * *

[2770]5160. Disclosure of Price and Concessions in Selling Agreements

Selling syndicate agreements or selling group agreements shall set forth the price at which the securities are to be sold to the public or the formula by which such price can be ascertained, and shall state clearly to whom and under what circumstances concessions, if any, may be allowed.

* * * * *