

OMB APPROVAL

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

File No. SR - 2010 - 005

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 Repeal Incorporated NYSE Rule 405(4) Common Sales Accounts

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	Kosha	Last Name	Dalal
Title	Associate Vice President and Associate General Counsel		
E-mail	kosha.dalal@finra.org		
Telephone	(202) 728-6903	Fax	(202) 728-8972

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 01/20/2010

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

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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

Add

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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

Add

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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

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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”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to repeal Incorporated NYSE Rule 405(4) (Common Sales Accounts) as part of the process of developing a consolidated FINRA rulebook.

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

At its meeting on September 24, 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. The implementation date will be no later than 180 days following Commission approval.

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 a new consolidated rulebook (“Consolidated FINRA Rulebook”),² FINRA is proposing to repeal NYSE Rule 405(4) (Common Sales

¹ 15 U.S.C. 78s(b)(1).

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

Accounts).³

NYSE Rule 405(4) (Common Sales Accounts) requires proper supervision of registered representatives handling common sales accounts. The rule provides that a member may facilitate the isolated liquidation of securities valued at \$1,000 or less registered in the name of an individual who does not have an account, and which are not part of any distribution, through a common sales account set up for the specific purpose of handling such sales. The rule further provides that such sales may be effected on behalf of the customer without requiring the member to send a periodic customer account statement to the individual as otherwise generally required, provided the following conditions are satisfied: (1) the customer is identified as the individual in whose name the securities are registered; (2) the securities are received by the member, at or prior to the time of the entry of the order, in the exact amount to be sold in good delivery form; (3) a confirmation is sent to the customer; (4) all proceeds of such sales are paid out on or immediately following settlement date; and (5) a record is made in the common sales account that includes certain customer-specific information.

NYSE Rule 405(4) was adopted by the NYSE in the late 1960's. FINRA believes that the rule as written may raise potential investor protection concerns and that certain terms would benefit from additional clarification. In this regard, in 1977, the NYSE

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 For convenience, the Incorporated NYSE Rules are referred to as the "NYSE Rules."

proposed amendments to Rule 405(4) to define the term “isolated” to mean “not exceeding five \$2,000 transactions during any twelve-month period unless otherwise approved by the NYSE,” and to allow unsolicited purchases as well as sales of securities. In late 1977, the SEC instituted proceedings to determine whether to disapprove the proposed rule change and identified the potential grounds for disapproval.⁴ In February 1978, the NYSE withdrew the filing.⁵

Further, NYSE Rule 405(4) permits a member to effect sales of securities for customers without expressly requiring prior customer consent and without the need to send periodic account statements to the customer. FINRA notes that in the event a member may seek permission not to send customer account statements under certain limited circumstances, proposed FINRA Rule 2231 which relates to customer account statements, would authorize FINRA to exempt members from the provisions of such rule, including the requirement to deliver periodic account statements, pursuant to the Rule 9600 Series.⁶

For these reasons, FINRA proposes that NYSE Rule 405(4) be eliminated and that its content not be adopted into the Consolidated FINRA Rulebook.

⁴ See Securities Exchange Act Release No. 14143 (November 7, 1977) (Order Instituting Proceedings to Determine Whether Proposed Changes to Rule 405 Should be Disapproved; File No. SR-NYSE-76-34). The SEC expressed concern that “execution of such transactions, and in particular of purchases [as proposed], in the common purchase and sale account may permit opportunities for fraudulent and manipulative acts or practices[.]”

⁵ See Securities Exchange Act Release No. 14630 (April 3, 1978) (Order Approving Withdrawal of NYSE’s Proposed Changes to Rule 405; File No. SR-NYSE-76-34).

⁶ See Securities Exchange Act Release No. 59921 (May 14, 2009), 74 FR 23912 (May 21, 2009) (Notice of Filing; File No. SR-FINRA-2009-028).

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. The implementation date will be no later than 180 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,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 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.

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.

⁷ See Securities Exchange Act Release No. 59921 (May 14, 2009), 74 FR 23912 (May 21, 2009) (Notice of Filing; File No. SR-FINRA-2009-028).

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.⁸

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.

⁸ 15 U.S.C. 78s(b)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-FINRA-2010-005)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Repeal Incorporated NYSE Rule 405(4) (Common Sales Accounts)

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 2010, 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 repeal Incorporated NYSE Rule 405(4) (Common Sales Accounts) as part of the process to develop the consolidated FINRA rulebook.

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.

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 a new consolidated rulebook ("Consolidated FINRA Rulebook"),³ FINRA is proposing to repeal NYSE Rule 405(4) (Common Sales Accounts).⁴

NYSE Rule 405(4) (Common Sales Accounts) requires proper supervision of registered representatives handling common sales accounts. The rule provides that a

³ 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).

⁴ For convenience, the Incorporated NYSE Rules are referred to as the "NYSE Rules."

member may facilitate the isolated liquidation of securities valued at \$1,000 or less registered in the name of an individual who does not have an account, and which are not part of any distribution, through a common sales account set up for the specific purpose of handling such sales. The rule further provides that such sales may be effected on behalf of the customer without requiring the member to send a periodic customer account statement to the individual as otherwise generally required, provided the following conditions are satisfied: (1) the customer is identified as the individual in whose name the securities are registered; (2) the securities are received by the member, at or prior to the time of the entry of the order, in the exact amount to be sold in good delivery form; (3) a confirmation is sent to the customer; (4) all proceeds of such sales are paid out on or immediately following settlement date; and (5) a record is made in the common sales account that includes certain customer-specific information.

NYSE Rule 405(4) was adopted by the NYSE in the late 1960's. FINRA believes that the rule as written may raise potential investor protection concerns and that certain terms would benefit from additional clarification. In this regard, in 1977, the NYSE proposed amendments to Rule 405(4) to define the term "isolated" to mean "not exceeding five \$2,000 transactions during any twelve-month period unless otherwise approved by the NYSE," and to allow unsolicited purchases as well as sales of securities. In late 1977, the SEC instituted proceedings to determine whether to disapprove the proposed rule change and identified the potential grounds for disapproval.⁵ In February

⁵ See Securities Exchange Act Release No. 14143 (November 7, 1977) (Order Instituting Proceedings to Determine Whether Proposed Changes to Rule 405 Should be Disapproved; File No. SR-NYSE-76-34). The SEC expressed concern

1978, the NYSE withdrew the filing.⁶

Further, NYSE Rule 405(4) permits a member to effect sales of securities for customers without expressly requiring prior customer consent and without the need to send periodic account statements to the customer. FINRA notes that in the event a member may seek permission not to send customer account statements under certain limited circumstances, proposed FINRA Rule 2231 which relates to customer account statements, would authorize FINRA to exempt members from the provisions of such rule, including the requirement to deliver periodic account statements, pursuant to the Rule 9600 Series.⁷

For these reasons, FINRA proposes that NYSE Rule 405(4) be eliminated and that its content not be adopted into the Consolidated FINRA Rulebook.

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 implementation date will be no later than 180 days following Commission approval.

that “execution of such transactions, and in particular of purchases [as proposed], in the common purchase and sale account may permit opportunities for fraudulent and manipulative acts or practices[.]”

⁶ See Securities Exchange Act Release No. 14630 (April 3, 1978) (Order Approving Withdrawal of NYSE’s Proposed Changes to Rule 405; File No. SR-NYSE-76-34).

⁷ See Securities Exchange Act Release No. 59921 (May 14, 2009), 74 FR 23912 (May 21, 2009) (Notice of Filing; File No. SR-FINRA-2009-028).

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 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:

⁸ 15 U.S.C. 78o-3(b)(6).

(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-2010-005 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-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 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-2010-005 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.⁹

Florence E. Harmon

Deputy Secretary

⁹ 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.

* * * * *

Incorporated NYSE Rule 405(4) to be Deleted in its Entirety from the Transitional Rulebook

* * * * *

Rule 405. Diligence as to Accounts¹

Every member organization is required through a principal executive or a person or persons designated under the provisions of Rule 342(b)(1) to

[(4) Common Sales Accounts]

[To facilitate the isolated liquidation of securities valued at \$1,000 or less registered in the name of an individual who does not have an account, and which are not part of any distribution, a member organization may sell the securities through a common sales account set up for the specific purpose of handling such sales without sending a periodic statement to the customer as required by Rule 409, provided:]

- [a] The customer is identified as the individual in whose name the securities are registered,]
- [b] The securities are received by the member, at or prior to the time of the entry of the order, in the exact amount to be sold in good delivery form,]
- [c] A confirmation is sent to each customer,]

¹ NYSE Rule 405(1)-(3) and Supplementary Material is being addressed separately as part of the consolidated suitability rules.

- [d) All proceeds of such sales are paid out on or immediately following settlement date, and]
- [e) The record made in the common sales account includes as to each transaction: customer's name and address, name and amount of securities to be sold, date received, date sold, amount per share, total amount credited to the account, total amount of check issued to the customer and the date of disbursement.]

* * * * *