

liability notices that allows DTC participants and National Securities Clearing Corporation clearing members to create, send, process, and tract such notices. Transmitting liability notices through SMART/Track eliminates paper liability notices and provides firms with an electronic, centralized system for the distribution, management and control of liability notices. Use of SMART/Track helps reduce the risks, costs, and delays resulting from missing or inaccurate information associated with paper corporate action liability notices. Specifically, provides participants with (1) more timely receipt and distribution of corporation action liability notifications, (2) a centralized system to manage and control all liability notifications on all issues, (3) immediate identification of the security affected by a corporate action liability notification, (4) detailed disclosure and clearer explanation of the terms and conditions of the corporate action, and (5) an audit trail with a complete record of actions taken regarding a liability notice.

As amended, NASD Rule 11810(i) mandates the use of the automated liability notification system of a registered clearing agency when the parties to a failed contract involving securities that have become the subject of a voluntary corporate action are both participant in a clearing agency that has an automated service for corporate action liability notices.⁴ When either or both parties to such a contract are not participants in a registered clearing agency that has an automated service for corporate action liability notices, Rule 11810(i) continues to require the liability notice to be issued using written or comparable electronic media having immediate receipt capabilities.

NASD will announce the effective date of the proposed rule change in a "Notice to Members" that will be published no later than sixty days from the date of approval of this rule change. The NASD anticipates that the effective date of the rule change will be thirty days following publication of the Notice to Members announcing the Commission's approval.

III. Discussion

Section 15A(b)(6) of the Act requires, among other things, that the rules of a securities association be designed to remove impediments to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the

public interest.⁵ The proposed rule change is consistent with the provisions of the Act because by eliminating the use of paper corporate action liability notices and requiring the use of a registered clearing agency's automated service for corporate action liability notices where available, the proposed rule change should help reduce the risks, costs, and delays resulting from missing or inaccurate information associated with paper corporate action liability notices.

Accordingly, for the reasons stated above the Commission finds that the rule change, is consistent with FINRA's obligation under Section 15A(b)(6) of the Act to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 15A(b)(6) of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NASD-2007-035) be and hereby is approved.

For the Commission by the Division of Trading and Practices, pursuant to delegated authority.⁶

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57010; File No. SR-FINRA-2007-020]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Create Exception to Principal Approval Requirements for Certain Filed Sales Material

December 20, 2007.

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 November 1, 2007, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially 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 amend NASD Rule 2210 (Communications with the Public) to create an exception from the principal approval requirements for certain filed sales material. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

2200. COMMUNICATIONS WITH CUSTOMERS AND THE PUBLIC

2210. Communications With the Public

(a) No Change.

(b) Approval and Recordkeeping.

(1) Registered Principal Approval for Advertisements, Sales Literature and Independently Prepared Reprints

(A) A registered principal of the member must approve by signature or initial and date each advertisement, item of sales literature and independently prepared reprint before the earlier of its use or filing with NASD's Advertising Regulation Department ("Department").

(B) With respect to debt and equity securities that are the subject of research reports as that term is defined in Rule 472 of the New York Stock Exchange, [this requirement] *the requirements of paragraph (A)* may be met by the signature or initial of a supervisory analyst approved pursuant to Rule 344 of the New York Stock Exchange.

(C) A registered principal qualified to supervise security futures activities must approve by signature or initial and date each advertisement or item of sales literature concerning security futures.

(D) *The requirements of paragraph (A) shall not apply with regard to any advertisement, item of sales literature, or independently prepared reprint if, at the time that a member intends to publish or distribute it:*

⁴ Currently DTC is the only registered clearing agency operating an automated corporate liability notification service.

⁵ 15 U.S.C. 78o-3(b)(6).

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

(i) another member has filed it with the Department and has received a letter from the Department stating that it appears to be consistent with applicable standards; and

(ii) the member using it in reliance upon this paragraph has not materially altered it and will not use it in a manner that is inconsistent with the conditions of the Department's letter.

(2) Recordkeeping

(A) Members must maintain all advertisements, sales literature, and independently prepared reprints in a separate file for a period beginning on the date of first use and ending three years from the date of last use. The file must include:

(i) a copy of the advertisement, item of sales literature or independently prepared reprint, and the dates of first and (if applicable) last use of such material;

(ii) the name of the registered principal who approved each advertisement, item of sales literature, and independently prepared reprint and the date that approval was given, unless such approval is not required pursuant to paragraph (b)(1)(D); and

(iii) for any advertisement, item of sales literature or independently prepared reprint for which principal approval is not required pursuant to paragraph (b)(1)(D), the name of the member that filed the advertisement, sales literature or independently prepared reprint with the Department, and a copy of the corresponding review letter from the Department.

(B) No Change.

(c) through (e) No Change.

* * * * *

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

NASD Rule 2210 (Communications with the Public) requires that a

registered principal of a FINRA member firm approve in writing all advertisements, sales literature, and independently prepared reprints (collectively, "sales material") prior to use. Certain types of sales material, such as advertisements and sales literature concerning mutual funds or variable insurance products must be filed with the FINRA Advertising Regulation Department ("Department").

For funds and variable products that are sold through intermediary firms, a registered principal at the fund's or variable product's underwriter typically approves sales material internally and files the material with the Department. FINRA rules require registered principals at each of the intermediary firms that use the underwriter's sales material to re-approve in writing each of these items used by their firms. (The intermediary firm is not required to re-file the sales material with the Department so long as it is used without material change.) If firms have selling agreements with multiple fund families and insurance companies, the number of items that require re-approval can easily be in the hundreds, and often thousands, per firm annually.

Based on recommendations made by its Small Firms Rules Impact Task Force,³ and to eliminate what FINRA regards as a compliance redundancy, FINRA is proposing to create an exception to Rule 2210's registered principal approval requirements for intermediary firms that use the sales material of another firm. The exception would apply only to sales material that another firm has filed with the Department, and for which the Department has issued a review letter finding that the material appears to be consistent with applicable standards.

The intermediary firm that relies on this exception could not materially alter the sales material or use it in a manner that is inconsistent with any conditions stated in the Department's review letter. For example, if the Department's review letter was based in part upon the representation by the filing firm that the sales material would be accompanied by a fund prospectus, the intermediary firm would be subject to a similar constraint.

Although FINRA anticipates that firms will utilize the exception primarily with respect to mutual fund and variable insurance product sales

material, the exception is not limited to sales material for particular products. Thus, the exception also would apply to sales material for other products, such as real estate investment trusts or direct participation programs, provided the sales material meets the exception's requirements.

If this exception were adopted, FINRA believes it would save intermediary firms' compliance personnel numerous hours that are currently spent reviewing sales material that has already been approved by a registered principal at the product underwriter, and that the Department staff also has reviewed and found to be consistent with applicable standards. Of course, some firms may want to continue to review this sales material, and the proposal would allow them to do so.⁴

The proposed rule change would also revise certain of the advertising recordkeeping requirements. Today, Rule 2210(b)(2)(A) states that firms must maintain a copy of all sales material for a period of three years from the date of last use. Existing practice has been to assume that the record-keeping requirement begins on the date of first use. The proposal would codify this position. For sales material subject to the principal approval exception, firms would have to keep a record of the name of the firm that filed the sales material and a copy of the related FINRA review letter.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be the date FINRA publishes the *Regulatory Notice* announcing 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 just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that creation of an exception that eliminates

⁴ The proposed rule change would not affect the contractual obligations that exist between underwriters and intermediary firms. Some dealer agreements may, for example, restrict the ability of underwriters and product wholesalers to send their sales material directly to a retail firm's sales force. These restrictions can facilitate the intermediary firm's ability to supervise its sales force. The proposed rule change would not alter the underwriter's obligations to comply with these contractual restrictions.

⁵ 15 U.S.C. 78o-3(b)(6).

³ NASD established the Small Firms Rules Impact Task Force in September 2006 to examine how existing NASD rules impact smaller firms. In particular, the Task Force focuses on possible opportunities to amend or modernize certain conduct rules that may be particularly burdensome for small firms, where such changes are consistent with investor protection and market integrity.

the requirement for firms to re-approve sales material in limited circumstances where a registered principal of a firm has previously approved the sales material and the Department has previously supplied a favorable review letter is 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. This exception from the principal approval requirements of Rule 2210 will eliminate a current compliance redundancy and will continue to protect investors, since the initial firm creating all sales material subject to this exception will still have to obtain approval from its registered principal, file it for review with the Department, and obtain a favorable review letter from the Department.

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, as amended.

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 such 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-2007-020 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2007-020. 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-2007-020 and should be submitted on or before January 18, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Florence E. Harmon,
Deputy Secretary.

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⁶ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57020; File No. SR-FINRA-2007-012]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 thereto to Amend Trade Reporting Rules to Require Related Market Center Indicator on Certain Non-Tape Reports Submitted to FINRA

December 20, 2007.

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 September 12, 2007, 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") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA.³ On December 18, 2007, FINRA filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change as modified by Amendment No. 1 from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend its trade reporting rules to require that on any non-tape report (a non-tape, non-clearing report or a clearing-only report) submitted to a FINRA Facility (*i.e.*, the Alternative Display Facility ("ADF"), a Trade Reporting Facility ("TRF")⁴ or the OTC Reporting Facility ("ORF")) associated with a previously executed trade that was not reported to that same

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD's Certificate of Incorporation to reflect its name change to the Financial Industry Regulatory Authority, Inc., or FINRA, in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. See Securities Exchange Act Release No. 56146 (July 26, 2007), 72 FR 42190 (August 1, 2007).

⁴ Effective July 30, 2007, FINRA was formed through the consolidation of NASD and the member regulatory functions of NYSE Regulation, Inc. Accordingly, the TRFs are now doing business as the FINRA TRFs (*i.e.*, the FINRA/Nasdaq TRF, the FINRA/NSX TRF and the FINRA/NYSE TRF). The formal name change of each TRF is pending and once completed, FINRA will file a separate proposed rule change to reflect those changes in the Manual.