

priced customer limit orders are protected over superior priced limit orders, and that "adoption of SR-NASD-2007-041 without correction of this anomalous situation would disrupt the orderly functioning of the market for OTC Equity Securities."

The Pink OTC Letter also recommended more broadly that the minimum increments of IM-2110-2 be considered as part of an amendment that would mandate minimum quote increment tier sizes for OTC equity securities.²⁵ The Pink OTC Letter urged that minimum increments for price improvement should mirror minimum quote increment tier sizes established on the Pink Quote interdealer quotation system to create "a level playing field for all market participants and improve investor confidence in the market."

III. Discussion and Commission's Findings

The Commission has reviewed carefully the proposed rule change, as modified by Amendment No. 2, and the two comment letters it received, and finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the Act and the rules and regulations thereunder applicable to a national securities association, including the provisions of Section 15A(b)(6) of the Act,²⁶ which requires, among other things, that FINRA rules be designed to promote just and equitable principles of trade, to foster cooperation and coordination with the persons engaged in regulating, clearing, settling, processing transactions in securities, and, in general, to protect investors and the public interest.²⁷

The Commission previously approved revisions to IM-2110-2 to apply the Manning Rule to OTC equity securities,²⁸ and notes that FINRA delayed its implementation pending Commission approval of the instant proposed rule change, as amended.²⁹

FINRA's proposal would revise the current price-improvement standards by adding a number of tiers to the minimum price-improvement standard for customer limit orders priced below \$.01; adjusting the price-improvement

standards to also include a measure based on one-half of the current inside spread for customer limit orders in OTC equity securities when such limit orders are priced greater than or equal to \$1.00; and changing the price improvement standards for limit orders priced outside the inside market. The Commission believes that these revisions to IM-2110-2 are appropriate and reasonably designed to protect customer limit orders in both NMS stocks and OTC equity securities.

Fidessa Corp. suggested that the minimum price-improvement standards should be based on the security's trade price rather than the limit order price of the customer limit order. The commenter observed that anomalies can occur at the periphery of the minimum price improvement tiers for low-priced securities when the minimum price-improvement requirement is based on the order's price.

In the FINRA Response Letter, FINRA responded that Fidessa Corp.'s proposed alternative approach would address some of the potential anomalies in the application of the proposed rule, but could have unintended consequences in its application and would require significant reprogramming by the firms to implement. Instead, FINRA revised its proposal, in Amendment No. 2, to require firms to institute written policies and procedures to fill those more aggressively priced customer limit orders ahead of other less aggressively priced limit orders covered by the Rule. This approach was supported by Pink OTC.

The Commission believes that the revisions in Amendment No. 2 are reasonably designed to eliminate the anomalies that can occur in the case of limit orders with prices that straddle the proposed minimum price-improvement tiers. Although Pink OTC urged that amendments to IM-2110-2 should be complemented by additional provisions mandating minimum quote increment tier sizes for OTC equity securities, the Commission considers this recommendation to be beyond the scope of the proposed rule change before it.

Accordingly, the Commission believes that the proposed rule change strikes a reasonable balance between protecting customer limit orders and enhancing the opportunity for investors to receive superior-priced limit order executions in OTC equity securities.

For the reasons described above, the Commission believes that the proposed rule change is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the

proposed rule change (SR-NASD-2007-041), as modified by Amendment No. 2, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁰

Florence E. Harmon,
Acting Secretary.

[FR Doc. E8-22011 Filed 9-19-08; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58533; File No. SR-FINRA-2008-036]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change Relating to Incorporated NYSE Rules

September 12, 2008

I. Introduction

On July 3, 2008, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend certain rules of the New York Stock Exchange LLC ("NYSE") that relate to member firm conduct, and that have been incorporated into the FINRA rulebook ("Incorporated NYSE Rules"). The proposed rule change was published for comment in the **Federal Register** on July 14, 2008.³ The Commission received one comment letter regarding the proposal.⁴ This order approves the proposed rule change.

II. Description of the Proposed Rule Change

Currently, the FINRA rulebook consists of rules of the National Association of Securities Dealers, Inc. ("NASD Rules"), and the Incorporated NYSE Rules. The Incorporated NYSE Rules apply only to firms that are members of FINRA and the NYSE ("Dual Members"). FINRA is currently developing a consolidated rulebook which will consist only of FINRA rules. In the interim period, FINRA proposes

²⁵ Pink OTC attached a study of its 2006 Minimum Quote Increment Tier Pilot Program. ("Pink OTC Pilot Program") According to Pink OTC, the study showed that minimum tier sizes implemented during the Pink OTC Pilot Program did not result in artificial widening of spreads or degradation of market quality.

²⁶ See 15 U.S.C. 78o-3(b)(6).

²⁷ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁸ See Release No. 34-55351, *supra* note 10.

²⁹ See *supra* note 13.

³⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 58103 (July 3, 2008), 73 FR 40403.

⁴ See letter from Amal Aly, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association ("SIFMA"), to Florence E. Harmon, Acting Secretary, Commission, dated August 4, 2008 ("SIFMA letter").

several amendments to the Incorporated NYSE Rules.

In some instances, FINRA proposes to harmonize inconsistencies between the Incorporated NYSE Rules and the NASD Rules. For example, FINRA proposes to delete the term "allied member" from the Incorporated NYSE Rules, as that concept has no direct FINRA analogue.⁵ Similarly, FINRA proposes to reposition the Incorporated NYSE Rules governing the closing-out of securities contracts ("Buy-In Rules"), combining NYSE Rules 283, 285, 286, 287, 288, 289, and 290 in NYSE Rule 282. This proposed change would consolidate the NYSE Buy-In Rules into one rule, and would make NYSE Rule 282 more similar in format to the corresponding NASD rule.

In other instances, FINRA proposes to rescind provisions of the Incorporated NYSE Rules that are substantively addressed by NASD Rules. For example, FINRA proposes to rescind NYSE Rule 404, which regulates the carrying of accounts for customers by members, as that rule is duplicative of the FINRA Letter of Approval. Similarly, FINRA proposes to rescind NYSE Rule 446, which relates to business continuity and contingency plans, as that rule is nearly identical to NASD Rules 3510 and 3520.

FINRA also proposes to delete certain NYSE Rules that are outdated, and that have no equivalent NASD rules. For example, FINRA proposes to rescind NYSE Rule 311(h), which prescribes the number of partners a member organization must have in order for that member to conduct business. There is no comparable NASD rule, and, according to FINRA, this rule no longer applies to members' current business models.

III. Summary of Comments

The Commission received one comment letter in response to the proposed rule change.⁶ That commenter supported the proposed rule change, and urged that the Commission approve it as expeditiously as possible.⁷ However, that commenter also requested that the Commission, upon approving the proposed rule change, take steps to ensure that NYSE adopts conforming changes to its rulebook.⁸ According to the commenter, until the NYSE rulebook is conformed to the

Incorporated NYSE Rules, Dual Members will be subject to the Incorporated NYSE Rules, the legacy NASD rules that currently form part of the FINRA rulebook, and the NYSE rules.⁹ The commenter stated that this would be "entirely inconsistent with one of the key benefits in the creation of FINRA."¹⁰

IV. Discussion and Commission Findings

The Commission has reviewed the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association¹¹ and, in particular, Section 15A(b)(6) of the Act,¹² which requires that FINRA have rules 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's proposal provides greater harmonization between the Incorporated NYSE Rules and the NASD Rules. The amendments to the Incorporated NYSE Rules will reduce regulatory disparities, and will lessen the regulatory burden on Dual Members. Additionally, the concern articulated by the commenter has been effectively addressed by a recent NYSE filing.¹³ In SR-NYSE-2008-80, NYSE proposes to amend its rulebook to conform its rules to the Incorporated NYSE Rules.¹⁴

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-FINRA-2008-036) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Florence E. Harmon,
Acting Secretary.

[FR Doc. E8-22012 Filed 9-19-08; 8:45 am]

BILLING CODE 8010-01-P

⁹ *Id.*

¹⁰ *Id.*

¹¹ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹² 15 U.S.C. 78o-3(b)(6).

¹³ See SR-NYSE-2008-80 (filed September 5, 2008).

¹⁴ *Id.*

¹⁵ 17 CFR 200.30-3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11418 and #11419]

Louisiana Disaster Number LA-00019

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Louisiana (FEMA-1786-DR), dated 09/02/2008.

Incident: Hurricane Gustav.

Incident Period: 09/01/2008 and continuing.

Effective Date: 09/11/2008.

Physical Loan Application Deadline Date: 11/03/2008.

EIDL Loan Application Deadline Date: 06/02/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Louisiana, dated 09/02/2008 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Parishes: (Physical Damage and Economic Injury Loans): Calcasieu.

All other parishes contiguous to the above named primary parish have previously been declared.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8-22023 Filed 9-19-08; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

Disaster Declaration #11418 and #11419

Louisiana Disaster Number LA-00019

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Louisiana (FEMA-1786-DR), dated 09/02/2008.

⁵ Where the use of the term "allied member" in the Incorporated NYSE Rules denotes an individual's status as a "control person" of a member organization, FINRA proposes to substitute "allied member" with the newly-created category of "principal executive."

⁶ *Supra* note 4.

⁷ *Id.* at 1.

⁸ *Id.* at 2.