

adequacy of information available to investors in the registration of securities and assures public availability. Form 18-K takes approximately 8 hours to prepare and is filed by approximately 143 respondents for a total annual reporting burden of 1,144 hours. We estimate that 100% of the total burden is prepared by the company.

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: PRA_Mailbox@sec.gov.

Dated: November 24, 2009.

Elizabeth M. Murphy,
Secretary.

[FR Doc. E9-28683 Filed 11-30-09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, December 3, 2009 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552(b)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Casey, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, December 3, 2009 will be: Institution and settlement of injunctive actions; institution and settlement of administrative proceedings; adjudicatory matter; and other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551-5400.

Dated: November 25, 2009.

Elizabeth M. Murphy,
Secretary.

[FR Doc. E9-28813 Filed 11-27-09; 11:15 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61059; File No. SR-FINRA-2009-059]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Adopt NASD Rules 2360 and 2361 Into the Consolidated Rulebook as FINRA Rules 2130 and 2270

November 24, 2009.

I. Introduction

On September 9, 2009, 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"), 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 adopt NASD Rule 2360 (Approval Procedures for Day-Trading Accounts) as FINRA Rule 2130 and to adopt NASD Rule 2361 (Day-Trading Risk Disclosure Statement) as FINRA Rule 2270 in the consolidated FINRA rulebook, with minor changes. The proposed rule change was published for comment in the Federal Register on October 8, 2009.³ The Commission received no comments on the proposal.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 60754 (Oct. 2, 2009), 74 FR 51886.

This order approves the proposed rule change.

II. Description of the Proposal

As part of the process of developing a new consolidated rulebook (the "Consolidated FINRA Rulebook"),⁴ FINRA proposed to adopt NASD Rules 2360 and 2361 as FINRA Rules 2130 and 2270. NASD Rules 2360 and 2361 focus on members' obligations to disclose to non-institutional customers⁵ the basic risks of engaging in a "day-trading strategy" and to assess the appropriateness of day-trading strategies for such customers. The rules define a "day-trading strategy" as "an overall trading strategy characterized by the regular transmission by a customer of intra-day orders to effect both purchase and sale transactions in the same security or securities."⁶ NASD Rule 2360 creates an obligation on members that promote a day-trading strategy regarding account-opening approval procedures for non-institutional customers. NASD Rule 2361 creates an obligation on such members to disclose to non-institutional customers the unique risks of engaging in a day-trading strategy.

Approval Procedures for Day-Trading Accounts

NASD Rule 2360 prohibits a member promoting a day-trading strategy from opening an account for a non-institutional customer unless, prior to opening the account, the member has furnished the customer with a risk disclosure statement (as described in NASD Rule 2361) and has either (1) approved the customer's account for a day-trading strategy and prepared a record setting forth the basis for the approval; or (2) obtained from the customer a written agreement stating that the customer does not intend to use the account to engage in a day-trading

⁴ 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 FINRA Information Notice, March 12, 2008 (Rulebook Consolidation Process).

⁵ For purposes of these rules, the term "non-institutional customer" means a customer that does not qualify as an "institutional account" under NASD Rule 3110(c)(4). See NASD Rule 2360(f); NASD Rule 2361(d). FINRA is proposing to adopt NASD Rule 3110(c)(4) as FINRA Rule 4512(c). See *Regulatory Notice* 08-25 (May 2008).

⁶ See NASD Rule 2360(e); NASD Rule 2361(c).

strategy. The rule further requires that, in order to approve a customer's account for a day-trading strategy, a member must have reasonable grounds to make a determination that a day-trading strategy is appropriate for the customer.⁷

The proposed rule change would transfer NASD Rule 2360 with the following minor changes into the Consolidated FINRA Rulebook as FINRA Rule 2130. First, the proposed rule change would add Supplementary Material to clarify the concept of "promoting a day-trading strategy," based on guidance provided in the 2000 FINRA Notice and the 2000 SEC Approval Order, as follows:

.01 Promoting a Day-Trading Strategy.

(a) A member shall be deemed to be "promoting a day-trading strategy" if it affirmatively endorses a "day-trading strategy," as defined in paragraph (e) of this Rule, through advertising, its Web site, training seminars or direct outreach programs. For example, a member generally shall be deemed to be "promoting a day-trading strategy" if its advertisements address the benefits of day-trading, rapid-fire trading, or momentum trading, or encourage persons to trade or profit like a professional trader. A member also shall be deemed to be "promoting a day-trading strategy" if it promotes its day-trading services through a third party. Moreover, the fact that many of a member's customers are engaging in a day-trading strategy will be relevant in determining whether a member has promoted itself in this way.⁸

Second, the proposed rule change would add Supplementary Material, based on guidance provided in the 2000 SEC Approval Order and the 2000 FINRA Notice, to specifically provide that a member may submit advertising materials to FINRA's Advertising Department for review and guidance on whether the content of the advertisement constitutes "promoting a day-trading strategy," as follows:

.02 Review by FINRA's Advertising Department. A member may submit its advertisements to FINRA's Advertising Department for review and guidance on whether the content of the advertisement constitutes "promoting a day-trading strategy" for purposes of this Rule.

⁷ In making such determination, the rule requires a member to exercise reasonable diligence to ascertain the essential facts relative to the customer, including investment objectives, investment and trading experience and knowledge, financial situation, tax status, employment status, marital status, number of dependents and age. See NASD Rule 2360(b).

⁸ To enhance the readability of the rule, the proposed rule change would relocate paragraph (g) of Rule 2360 regarding those activities that would not constitute "promoting a day-trading strategy," as paragraph (b) of this new Supplementary Material .01.

Third, the proposed rule change would add Supplementary Material to alert members of additional FINRA rules specifically addressing day-trading, including the rule addressing the Disclosure Statement (further discussed below) and rules regarding margin requirements.⁹

Finally, the proposal would make minor changes to the rule to update cross-references and format.

Day-Trading Risk Disclosure Statement

NASD Rule 2361 requires members that promote a day-trading strategy to deliver to their non-institutional customers, prior to opening an account for such customers, a risk disclosure statement, as specified in paragraph (a) of the rule (the "Disclosure Statement").¹⁰ In addition, members that promote a day-trading strategy must post the Disclosure Statement on their Web sites in a clear and conspicuous manner. The Disclosure Statement includes seven specific points, described in more detail in the statement itself, addressing the factors that a customer should consider before engaging in day-trading.

The proposed rule change would transfer NASD Rule 2361 with the following minor changes into the Consolidated FINRA Rulebook as FINRA Rule 2270.

First, the proposed rule change would slightly modify the rule's existing provisions regarding form of delivery of documents. Currently, the rule provides that the disclosure statements may be provided to individuals either "in writing or electronically." Because in some circumstances electronic documents may be considered a form of "writing," the proposal would amend the rule to clarify that the documents may be provided "in paper or electronic form."

Second, to comport with the proposed revisions to NASD Rule 2360, the proposed rule change would add a statement to FINRA Rule 2270 that the term "promoting a day-trading strategy" shall have the meaning as provided in FINRA Rule 2130.

Third, the proposed rule change would add Supplementary Materials similar to those proposed to be added to FINRA Rule 2130, as discussed above, to specifically provide that a member may submit advertising materials to

⁹ See proposed Supplementary Material .03 to proposed FINRA Rule 2130.

¹⁰ The rule provides that, in lieu of the disclosure statement specified in the rule, a member may use an alternative disclosure statement, provided that it is substantially similar to the specified disclosure statement and is approved by FINRA's Advertising Department prior to use. See NASD Rule 2361(b).

FINRA's Advertising Department for review and guidance on whether the content of the advertisement constitutes "promoting a day-trading strategy" and to alert members of additional FINRA rules specifically addressing day-trading.¹¹

Finally, the proposed rule change would make minor changes to the rule to update cross-references and format.

III. Discussion

Day-trading raises unique investor protection concerns. In general, day traders seek to profit from very small movements in the price of a security. Such a strategy often requires aggressive trading of a brokerage account and the use of strategies including margin trading and short selling. As a result, day-trading generally requires a significant amount of capital, a sophisticated understanding of securities markets and trading techniques, and a high tolerance for risk. Even experienced day traders with in-depth knowledge of the securities markets may suffer severe and unexpected financial losses.

Firms that are actively promoting a day-trading strategy should be responsible for assessing whether the strategy is appropriate for an individual who opens a day-trading account at that firm. These firms also should be required to disclose the risks of engaging in a day-trading strategy to an individual prior to opening an account for that individual. NASD Rules 2360 and 2361 were designed to assure that firms promoting a day-trading strategy check to make certain that day-trading is an appropriate investment strategy for a customer opening a day-trading account and that the customer is aware of its risks.

After careful review, the Commission finds that transferring NASD Rules 2360 and 2361, with the changes specified above, into the FINRA Consolidated Rulebook as FINRA Rules 2130 and 2270 is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.¹² In particular, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹³ which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and

¹¹ See proposed Supplementary Material .01 and .02 to proposed FINRA Rule 2270.

¹² In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

¹³ 15 U.S.C. 78o-3(b)(6).

equitable principles of trade, and, in general, to protect investors and the public interest.

More specifically, the Commission believes requiring a member firm to disclose the risks of day-trading to non-institutional customers when the firm promotes a day-trading strategy should help alert individuals to the risks associated with a day-trading strategy. In addition, requiring a member firm to determine whether a day-trading strategy is appropriate for a customer should help to assure that individuals who are unable to bear the risks of day-trading, or who have investment objectives incompatible with day-trading, are not approved for day-trading.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁴ that the proposed rule change (SR-FINRA-2009-059) be, and it hereby is, approved.

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

Elizabeth M. Murphy,
Secretary.

[FR Doc. E9-28613 Filed 11-30-09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61046; File No. SR-NYSE-2009-114]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Sample Broker Letters Set Forth In Rule 451

November 20, 2009.

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 16, 2009, New York Stock Exchange LLC (the “Exchange” or “NYSE”) 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 prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,³ which

renders the proposal effective upon filing with the Commission. 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

The Exchange proposes to amend Exchange Rule 451 and Sections 905.01, 905.02 and 905.03 of the Exchange’s Listed Company Manual (the “Manual”) to amend the forms of letters contained in those rules to reflect the recent amendments to the Exchange’s broker voting rules.

The text of the proposed rule change is available on the Exchange’s Web site (<http://www.nyse.com>), at the Exchange’s Office of the Secretary 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

In its filing with the Commission, the self-regulatory organization 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. The NYSE 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

The Exchange recently amended Exchange Rule 452 and Section 402.08 of the Manual to provide that brokers which are record holders of shares held in client accounts will no longer be permitted to vote those shares in the election of directors without instructions from the beneficial holder of those shares.⁴ The amendments take effect for shareholder meetings held on or after January 1, 2010, except to the extent that a meeting was originally scheduled to be held prior to such effective date but was properly adjourned to a date on or after such effective date.⁵

Supplementary Material .20 to Exchange Rule 451 and Sections 905.01, 905.02 and 905.03 contain specimens of letters containing the information and instructions required pursuant to the proxy rules to be given by NYSE member organizations to clients where the member organization is the record holder of shares beneficially owned by those clients in the circumstances where a broker (i) may vote on all proposals without voting instructions (Section 905.01), (ii) may not vote on any proposals without instructions (Section 905.02), and (iii) may vote on certain but not all proposals without instructions (Section 905.03). These letters are shown as examples and not as prescribed forms. Member organizations are permitted to adapt the form of these letters for their own purposes provided all of the required information and instructions are clearly enumerated in letters to clients.

The Exchange is concerned that many shareholders receiving proxy materials from their brokers for meetings scheduled after January 1, 2010 will not be aware of the amendments to the NYSE’s broker voting rules and may therefore assume that the broker as record holder will vote their shares on the election of directors if they do not return voting instructions to their broker. The NYSE believes it is important for as many shares as possible to be voted in the election of directors and, therefore, believes it is important to educate retail investors with respect to the implications of their failure to return voting instructions under the amended rules. Consequently, the Exchange proposes to amend the forms of letters provided for use in connection with meetings where the broker may vote on none of the proposals before the meeting and meetings where the broker may vote on some but not all of the proposals before the meeting. The proposed amendments will insert the following language in those forms for use in connection with meetings scheduled after January 1, 2010:

Please note that, under a rule amendment adopted by the New York Stock Exchange for shareholder meetings held on or after January 1, 2010, brokers are no longer allowed to vote shares held in their clients’ accounts on uncontested elections of directors unless the client has provided voting instructions (it will continue to be the case that brokers cannot vote their clients’ shares in contested director elections). Consequently, if you want us to vote your shares on your behalf on the election of directors, you must provide voting instructions to us. Voting on matters presented at shareholders meetings, particularly the election of directors, is the primary method for shareholders to influence the direction taken by a publicly-traded

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

⁴ See Securities Exchange Act Release No. 60215 (July 1, 2009) 74 FR 33293 (July 10, 2009) (SR-NYSE-2006-92).

⁵ The amendment does not affect brokers voting as record holders of shares of companies registered under the Investment Company Act of 1940.