

(44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collection of information discussed below.

Section 12(d)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a) generally prohibits registered investment companies ("funds"), and companies controlled by funds, from purchasing securities issued by a registered investment adviser, broker, dealer, or underwriter ("securities-related businesses"). Rule 12d3-1 ("Exemption of acquisitions of securities issued by persons engaged in securities related businesses" (17 CFR 270.12d3-1)) permits a fund to invest up to five percent of its assets in securities of an issuer deriving more than fifteen percent of its gross revenues from securities-related businesses, but a fund may not rely on rule 12d3-1 to acquire securities of its own investment adviser or any affiliated person of its own investment adviser.

A fund may, however, rely on an exemption in rule 12d3-1 to acquire securities issued by its subadvisers in circumstances in which the subadviser would have little ability to take advantage of the fund, because it is not in a position to direct the fund's securities purchases. The exemption in rule 12d3-1 is available if (i) the subadviser is not, and is not an affiliated person of, an investment adviser that provides advice with respect to the portion of the fund that is acquiring the securities, and (ii) the advisory contracts of the subadviser, and any subadviser that is advising the purchasing portion of the fund, prohibit them from consulting with each other concerning securities transactions of the fund, and limit their responsibility in providing advice to providing advice with respect to discrete portions of the fund's portfolio.

Based on an analysis of fund filings, the staff estimates that approximately 252 fund portfolios enter into subadvisory agreements each year.<sup>1</sup> Based on discussions with industry representatives, the staff estimates that it will require approximately 3 attorney hours to draft and execute additional clauses in new subadvisory contracts in order for funds and subadvisers to be able to rely on the exemptions in rule 12d3-1. Because these additional clauses are identical to the clauses that a fund would need to insert in their

subadvisory contracts to rely on rules 10f-3, 17a-10, and 17e-1 and because we believe that funds that use one such rule generally use all of these rules, we apportion this 3 hour time burden equally to all four rules. Therefore, we estimate that the burden allocated to rule 12d3-1 for this contract change would be 0.75 hours.<sup>2</sup> Assuming that all 252 funds that enter into new subadvisory contracts each year make the modification to their contract required by the rule, we estimate that the rule's contract modification requirement will result in 189 burden hours annually.<sup>3</sup>

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Complying with this collection of information requirement is necessary to obtain the benefit of relying on rule 12d3-1. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, <http://www.reginfo.gov>. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an e-mail to: [Shagufta\\_Ahmed@omb.eop.gov](mailto:Shagufta_Ahmed@omb.eop.gov); and (ii) Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted to OMB within 30 days of this notice.

Dated: February 25, 2011.

**Cathy H. Ahn,**

*Deputy Secretary.*

[FR Doc. 2011-4725 Filed 3-2-11; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>2</sup> This estimate is based on the following calculation (3 hours + 4 rules = .75 hours).

<sup>3</sup> This estimate is based on the following calculation: (0.75 hours × 252 portfolios = 189 burden hours).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63960; File No. SR-FINRA-2011-008]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Require Public Disclosure of Any Access or Post-Transaction Fees for Executions Against a Public Quotation in an OTC Equity Security

February 24, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 18, 2011, the 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 and II 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 require members to disclose on the member's Web site fees imposed against its published quotation in any OTC Equity Security consistent with FINRA Rule 6450 (Restrictions on Access Fees).

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

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.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>1</sup> Based on information in Commission filings, we estimate that 42.5 percent of funds are advised by subadvisers.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

On June 22, 2010, the SEC approved, among other rules, new FINRA Rule 6450 (Restrictions on Access Fees).<sup>3</sup> Rule 6450 provides that a firm may not impose, nor permit to be imposed, non-subscriber access or post-transaction fees against its published quotation in any OTC Equity Security that exceed or accumulate to more than:

- \$0.003 per share, if the published quotation is priced equal to or greater than \$1.00; or
- The lesser of (a) 0.3% of the published quotation price on a per share basis or (b) 30% of the minimum pricing increment under Rule 6434 relevant to the display of the quotation on a per share basis if the published quotation is less than \$1.00.

FINRA is filing the proposed rule change to add Supplementary Material .01 (the "disclosure rule") to provide that a member must disclose on its Web site, in a clear and conspicuous manner, fees (and changes to fees) imposed against its published quotations as provided for in Rule 6450 at least three (3) business days in advance.<sup>4</sup> Where a member makes multiple fee schedules available, the applicability of each schedule must be clear (e.g., volume discount tiers and rates). Members must maintain and preserve records of the fee schedules required to be made available pursuant to this disclosure rule for the period of time and accessibility specified in SEA Rule 17a-4(b) under the Exchange Act.

FINRA has requested that the Commission approve the proposed rule change on an accelerated basis, so that it may become effective as soon as possible. The effective date of the proposed rule change will be two weeks after Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Exchange Act,<sup>5</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to

<sup>3</sup> See Securities Exchange Act Release No. 62359, 75 FR 37488 (June 29, 2010) (Order Approving File No. SR-FINRA-2009-054).

<sup>4</sup> For purposes of the first three business days of the disclosure rule's operation, members would be in compliance with the advance notice requirement if they have posted the fees prior to 9 a.m. on the trading day upon which they impose the fee.

<sup>5</sup> 15 U.S.C. 78o-3(b)(6).

promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes the proposed rule change will provide transparency to members as to the level of non-subscriber access or post-transaction fees imposed against published quotations in OTC Equity Securities.

*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 Exchange 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 45 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 or disapprove 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](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2011-008 on the subject line.

*Paper Comments*

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

All submissions should refer to File Number SR-FINRA-2011-008. 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 Web site viewing and printing 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-2011-008 and should be submitted on or before March 24, 2011.

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

**Cathy H. Ahn,**  
*Deputy Secretary.*

[FR Doc. 2011-4720 Filed 3-2-11; 8:45 am]

BILLING CODE 8011-01-P

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-63966; File No. SR-FINRA-2011-009]

**Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Eliminate Duplicative Filings Under FINRA Rule 9610(a)**

February 25, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February

<sup>6</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.