to 49,999,999 shares outstanding; and from current $8,000 to $10,000 for each such issue with 50 million to 99,999,999 shares outstanding. For DSP issues that have 100 million shares or more outstanding, except Managed Fund Shares and Managed Trust Securities, the annual fee would remain unchanged.

For Managed Fund Shares and Managed Trust Securities, the Exchange proposes to impose an annual fee for each such issue as follows:

SHARES OUTSTANDING
[Each issue]

	Annual Fee
Less than 25 million	$7,500
25 million up to 49,999,999	10,000
50 million up to 99,999,999	12,500
100 million up to 249,999,999	20,000
250 million up to 499,999,999	30,000
500 million and over	40,000

The Exchange represents that, as the industry evolves with innovative product lines for investors, the proposed increases in the listing fee and the annual fee support the increased costs incurred by the Exchange for the rule making process, listing administration process, issuer services, and consultative legal services provided to issuers. Additionally, the Exchange states that a higher listing fee and annual fee for Managed Fund Shares and Managed Trust Securities reflect the greater resources the Exchange generally expends to provide services in connection with the listing and administration of these securities. The Commission finds that the proposed rule change is designed to equitably allocate reasonable dues, fees, and other charges among issuers of DSPs, and is consistent with the requirements of the Act.[8]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–NYSEArca–2009–106), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–801 Filed 1–15–10; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61319; File No. SR–FINRA–2009–093]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Repeal NASD Rule 2450 (Installment or Partial Sales), NASD Interpretive Material 2830–2 ("IM–2830–2") (Maintaining the Public Offering Price) and Incorporated NYSE Rule 413 (Uniform Forms) as Part of the Process of Developing a Consolidated FINRA Rulebook

January 8, 2010.

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 December 23, 2009, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) 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 NASD Rule 2450 (Installment or Partial Sales), NASD Interpretive Material 2830–2 ("IM–2830–2") (Maintaining the Public Offering Price), and Incorporated NYSE Rule 413 (Uniform Forms), as part of the process of developing a 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.

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 NASD Rule 2450 (Installment or Partial Sales), NASD IM–2830–2 (Maintaining the Public Offering Price), and Incorporated NYSE Rule 413 (Uniform Forms) to eliminate duplicative and unnecessary rules and remove outdated provisions from the Consolidated FINRA Rulebook.

NASD Rule 2450 (Installment or Partial Sales)

NASD Rule 2450 prohibits any arrangement whereby the customer of a member submits partial or installment payments for the purchase of a security with the following exceptions: (1) If a member is acting as agent or broker in such transaction, then the member must immediately make an actual purchase of the security for the account of the customer, and immediately take possession or control of the security and maintain possession or control of the security as long as the member is under the obligation to deliver the security to the customer; (2) if a member is acting as principal in such transaction, the member must, at the time of the transaction, own such security and maintain possession or control of the security as long as the member is under the obligation to deliver the security to the customer; and (3) where the provisions of Regulation T,[4] if applicable to the member, are satisfied.

The rule also prohibits the member, whether acting as principal or agent, in connection with any installment or partial sales transaction, from making any agreement with the customer whereby the member would be allowed to pledge or hypothecate any security involved in such transaction for any

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[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] Federal Reserve Board, Regulation T (Credit by Brokers and Dealers), 12 CFR 220 *et seq.*

amount in excess of the indebtedness of the customer to such member.

Section 220.8 of Regulation T permits the purchase of a security in the cash account predicated on either (1) there being sufficient funds in the account; or (2) the member accepting in good faith the customer's agreement that full cash payment will be made.[5] The rule further stipulates that payment must be made within a specified payment period.[6] Regulation T also allows the purchase of a security in a margin account, whereby a customer must deposit an initial requirement, based upon the amount of the transaction, within the specified payment period.

FINRA proposes to repeal NASD Rule 2450 in light of the explicit provisions in Regulation T requiring the deposit of sufficient funds within the specified payment period. FINRA also believes the hypothecation prohibition in NASD Rule 2450 would no longer be relevant because it is predicated on a partial or installment payment under the rule.

NASD IM–2830–2 (Maintaining the Public Offering Price)

Section 22(d) of the Investment Company Act generally prohibits a registered investment company, its principal underwriter, or a dealer from selling the fund's shares at a price other than the current public offering price described in the prospectus. As a general matter, this means that a broker-dealer must sell shares of a mutual fund to investors at the fund's current net asset value, plus any applicable sales load. Section 22(d) excepts from this prohibition sales to the fund itself, the fund's principal underwriter or another dealer.

In the 1950s, FINRA adopted an interpretation of Section 22(d) and NASD Rule 2420,[7] now codified as NASD IM–2830–2, that requires members to sell mutual funds at the public offering price not only to investors, but also to any non-member broker or dealer. NASD IM–2830–2 provides examples of transactions that would violate this prohibition. At the time NASD IM–2830–2 was adopted, some broker-dealers doing business with the public were not NASD members. Accordingly, it was possible for member firms to sell shares of mutual funds to non-member broker-dealers at a price below the current public offering price because of the exception in Section 22(d) for sales to other dealers. However, these kinds of transactions were inconsistent with the requirement under NASD Rule 2420 that transactions with non-member firms be on the same terms as transactions with the public.

Since the adoption of NASD IM–2830–2, the laws governing broker-dealers have changed, and today virtually all broker-dealers doing business with the public are FINRA members. In addition, NASD IM–2830–2 largely duplicates the requirement in Section 22(d) to sell mutual fund shares to investors at the current public offering price. As a result, FINRA believes NASD IM–2830–2 no longer serves any useful purpose, and proposes not to incorporate its content into the Consolidated FINRA Rulebook.

Incorporated NYSE Rule 413

Incorporated NYSE Rule 413 requires members to adopt such uniform forms as the NYSE may prescribe to facilitate the orderly flow of transactions within the financial community. This provision was adopted in 1973 to apply to forms generally, including membership forms.

The FINRA By-Laws contain several provisions by which FINRA may prescribe processes for members' activities, including the use of uniform forms.[8] Accordingly, FINRA proposes to repeal Incorporated NYSE Rule 413 in light of these provisions.

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.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[9] 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 further these requirements by eliminating duplicative and unnecessary rules and advancing the development of a more efficient and effective Consolidated FINRA Rulebook.

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:

(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

[5] *See* Regulation T 220.8(a)(1).

[6] According to Section 220.2 of Regulation T, payment period "means the number of business days in the standard securities settlement cycle in the United States, as defined in paragraph (a) of SEC Rule 15c6–1 (17 CFR 240.15c6–1(a)), plus two business days."

[7] NASD Rule 2420 imposes various restrictions on dealings with non-member brokers and dealers, including prohibiting a member from dealing with any non-member broker or dealer except at the same prices, for the same commissions or fees, and on the same terms and conditions as the member firm offers to the general public. NASD Rule 2420 will be addressed as part of a separate phase of the rulebook consolidation process.

[8] *See, e.g.*, the following provisions of the FINRA By-Laws: Article IV, Section 1 (providing that FINRA may prescribe the process for application for FINRA membership); Article IV, Section 8 (providing that FINRA may prescribe the process for members to advise FINRA regarding branch offices, including the opening, closing, relocation, change in designated supervisor, or change in designated activities of any branch office); Article V, Section 2 (providing that FINRA may prescribe the process for application for registration by registered representatives and associated persons); and Article V, Section 3 (providing that FINRA may prescribe the process for members' notification of termination of registered persons). In addition, FINRA has issued for comment proposed FINRA Rule 4540 governing information and data reporting and filing requirements. *See Regulatory Notice* 09–02 (January 2009). (FINRA Requests Comment on Proposed Consolidated FINRA Rule Governing Information and Data Reporting and Filing Requirements).

[9] 15 U.S.C. 78*o*–3(b)(6).

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2009–093 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–2009–093. 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,[10], 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 the 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–2009–093 and should be submitted on or before February 9, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–798 Filed 1–15–10; 8:45 am]

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[10] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov/*.

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61338; File No. SR–FINRA–2009–084]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Adopt FINRA Rule 5330 (Adjustment of Orders) in the Consolidated FINRA Rulebook

January 12, 2010.

On November 24, 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 3220 (Adjustment of Open Orders) as a FINRA rule in the consolidated FINRA rulebook with several changes and to renumber NASD Rule 3220 as FINRA Rule 5330 in the consolidated FINRA rulebook. The proposed rule change was published for comment in the **Federal Register** on December 8, 2009.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission 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 association.[4] In particular, the Commission finds 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 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.

The Commission believes that the proposed rule change is appropriate to continue to set forth how members are to adjust the terms of open orders when such orders involve a security that is subject to a dividend, payment, or distribution. The Commission notes that members will be prohibited from executing or permitting the execution of such open orders without first reconfirming the order with the customer when the value of a distribution cannot be determined. The Commission also notes that members will now be required to cancel all orders (both buy and sell), rather than just open orders, if a security is the subject of a reverse split. Members also will be required to notify a customer with a pending order that is not otherwise required to be adjusted under the rule when his or her order is the subject of a reverse split. The Commission believes that the proposed rule change will conform FINRA Rule 5330 with current trading practices, including the conversion from fractional to decimal trading increments. The Commission further believes that the proposed rule change will bring uniformity and harmonization to the treatment of open orders by conforming FINRA Rule 5330 with comparable rules of other self-regulatory organizations.[6]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–FINRA–2009–084) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–819 Filed 1–15–10; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61083 (December 1, 2009), 74 FR 64774.

[4] 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).

[5] 15 U.S.C. 78*o*–3(b)(6).

[6] *See, e.g.,* Nasdaq Rule 4761 and NYSE–Arca Rule 7.39.

[7] 15 U.S.C. 78s(b)(2)

[8] 17 CFR 200.30–3(a)(12)

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61333; File No. SR–NYSE–2009–117]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change Amending Its Listing Fees for Structured Products

January 12, 2010.

I. Introduction

On November 19, 2009, New York Stock Exchange LLC ("NYSE" or "Exchange") 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.