

of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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-CBOE-2008-81 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549-1090. All submissions should refer to File Number SR-CBOE-2008-81. 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 am and 3 pm. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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 No. SR-CBOE-2008-81 and should be

submitted on or before September 2, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8-18487 Filed 8-8-08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58302; File No. SR-FINRA-2008-039]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Adopt FINRA Rules 5110 (Corporate Financing Rule), 5190 (Notification Requirements for Offering Participants) and 6470 (Withdrawal of Quotations in an OTC Equity Security in Compliance With SEC Regulation M) in the Consolidated FINRA Rulebook

August 4, 2008.

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 July 16, 2008, 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 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 (1) adopt NASD Rule 2710, without material change except for paragraphs (b)(10) and (11), as a FINRA rule in the consolidated FINRA rulebook; and (2) clarify and streamline the notice and other requirements in FINRA rules relating to Regulation M under the Act (including paragraphs (b)(10) and (11) of NASD Rule 2710 and paragraph (a) of Incorporated NYSE Rule 392). The proposed rule change would renumber NASD Rule 2710 as FINRA Rule 5110 and adopt new FINRA Rules 5190 and 6470 in the consolidated FINRA rulebook.

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The text of the proposed rule change is available at FINRA, on FINRA's Web site at <http://www.finra.org>, and in 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 the new consolidated rulebook ("Consolidated FINRA Rulebook"),³ FINRA is proposing to (1) adopt NASD Rule 2710 as FINRA Rule 5110, with the exception of paragraphs (b)(10) and (11); (2) adopt new FINRA Rule 5190, which would house the Regulation M-related notice requirements applicable to members participating in securities offerings (including paragraphs (b)(10) and (11) of NASD Rule 2710 and paragraph (a) of Incorporated NYSE Rule 392); (3) adopt new FINRA Rule 6470, which would house certain Regulation M-related requirements that are currently in the OTC Bulletin Board ("OTCBB") rules and would apply to all OTC Equity Securities;⁴ and (4) make conforming amendments to the Regulation M-related rules applicable to the Alternative Display Facility ("ADF").

Corporate Financing Rule

NASD Rule 2710 (Corporate Financing Rule), except paragraphs (b)(10) and (11) (which are discussed below), regulates the underwriting terms

³ The current FINRA rulebook consists of two sets of rules: (1) NASD Rules and (2) rules incorporated from NYSE ("Incorporated NYSE Rules") (together referred to as the "Transitional Rulebook"). The Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). Dual Members also must comply with NASD Rules. For more information about the rulebook consolidation process, see *FINRA Information Notice*, March 12, 2008 (Rulebook Consolidation Process).

⁴ NASD Rule 6610(d) defines OTC Equity Security as "any non-exchange-listed security and certain exchange-listed securities that do not otherwise qualify for real-time trade reporting."

and arrangements of most public offerings, including shelf offerings, of securities sold through FINRA members. The Rule requires members to file with FINRA's Corporate Financing Department (the "Corporate Financing Department") information regarding initial public offerings and certain secondary offerings and to submit pertinent documentation, including registration statements. The Corporate Financing Department reviews this information prior to commencement of the offering to determine whether the underwriting compensation and other terms and arrangements meet the requirements of applicable FINRA rules. Members are required to receive the Corporate Financing Department's opinion of no-objections to the offering terms prior to participating in the offering.

FINRA is proposing to adopt NASD Rule 2710 as FINRA Rule 5110 in the Consolidated FINRA Rulebook. With the exception of the deletion of paragraphs (b)(10) and (11), as discussed below, FINRA is proposing to make only technical non-substantive changes to the Rule, such as replacing references to NASD or the Association with FINRA, and certain conforming changes to references in the Rule to, e.g., the Exchange Act, SEA Rules, the Securities Act and Securities Act Rules.

Regulation M-Related Requirements

Background and Discussion of Current FINRA Rules

Regulation M is designed to prevent manipulation by persons with an interest in the outcome of an offering and generally prohibits activities and conduct that could artificially influence the market for an offered security.⁵ In this regard, Regulation M generally prohibits underwriters, broker-dealers, issuers and other persons participating in a distribution from directly or indirectly bidding for or purchasing the offered security (or inducing another person to do so) during the "restricted period," which commences on the later of either one or five business days prior to the determination of the offering price or such time that a person becomes a distribution participant. For purposes of determining whether a one or five-day or no restricted period applies under Regulation M, the SEC has adopted a dual standard of world-wide average daily trading volume ("ADTV") and public float value. Regulation M also governs certain market activities, usually undertaken by

the managing underwriter or underwriting group (i.e., stabilizing bids, syndicate covering transactions and penalty bids)⁶ in connection with an offering and requires that notice of such activity be provided to the relevant self-regulatory organization or, in the case of stabilizing bids, the market where the stabilizing bid is to be posted. Finally, Regulation M generally prohibits any person from selling short a security that is the subject of a public offering and purchasing the security in the offering if such short sale was effected during the restricted period (which, for purposes of the short sale restrictions, generally is the five-day period prior to pricing).⁷

As part of FINRA's program to monitor for member compliance with Regulation M, FINRA's Market Regulation Department (the "Market Regulation Department") reviews members' over-the-counter ("OTC") trading and quoting activity for prohibited purchases and/or bids during the applicable restricted period and short sales during the five-day period prior to pricing the offering. FINRA rules must ensure that FINRA receives pertinent distribution-related information in a timely fashion to facilitate this component of FINRA's Regulation M compliance program.

FINRA's current Regulation M-related rules comprise notice requirements set forth in NASD Rule 2710(b)(10) and (11) and Incorporated NYSE Rule 392 (Notification Requirements for Offerings of Listed Securities), as well as marketplace-specific requirements in the OTCBB and ADF rules. NASD Rule 2710(b)(10) requires members that are acting as manager (or in a similar capacity) of a distribution of unlisted securities that are considered a subject or reference security subject to Rule 101 of Regulation M or an "actively traded" security under Rule 101 of Regulation M to submit a request for an Underwriting Activity Report ("UAR") from the Market Regulation Department. The request for a UAR, which is the mechanism by which FINRA currently receives notice of prospective distributions, must be submitted at the time a registration statement or similar offering document is filed with the

Corporate Financing Department, the SEC or other regulatory agency and if not filed with any regulatory agency, at least two business days prior to commencement of the restricted period. Such request must include a copy of the registration statement or similar offering document. If no member is acting as manager, then each member that is a distribution participant or affiliated purchaser shall submit the request for a UAR, unless another member has assumed responsibility for compliance.

NASD Rule 2710(b)(11) requires members that are acting as manager (or in a similar capacity) of a distribution of securities that are listed on a national securities exchange and considered a subject security or reference security subject to Rule 101 of Regulation M or an "actively traded" security under Rule 101 of Regulation M to provide notice to the Market Regulation Department of the pricing of the distribution, including the date and time of pricing, the offering price and the time the distribution terminated. Such notice must be provided no later than the close of business the day the offering terminates and may be submitted on the UAR.

Incorporated NYSE Rule 392(a) requires that Dual Members provide notice of pricing and related information (including the restricted period, if any, the offering price and the basis for pricing) in connection with an offering of an NYSE-listed security. Incorporated NYSE Rule 392(b) requires that Dual Members provide notice of syndicate covering transactions and penalty and stabilizing bids in connection with an offering of an NYSE-listed security.

FINRA's OTCBB and ADF-related marketplace rules also include certain Regulation M-related requirements. Any member that is a distribution participant or affiliated purchaser in a distribution of an OTCBB-eligible security must provide notice to the Corporate Financing Department of its intention to impose a penalty bid or conduct a syndicate covering transaction pursuant to Rule 104 of Regulation M.⁸

In addition, members are required to withdraw their quotations in the OTCBB (in OTCBB-eligible securities) and the ADF (in NMS stocks) to comply with applicable restricted periods under Regulation M. Specifically, a member that is a distribution participant or affiliated purchaser in a distribution of an OTCBB-eligible security must withdraw its quotations in the offered security⁹ and provide notice to FINRA's Operations Department prior to

⁶ A "stabilizing bid" is a bid that is intended to maintain the price of the offered security and is necessary to prevent or retard a decline in the security's price. A "penalty bid" allows a lead underwriter to reclaim a selling concession paid to a syndicate member if that member's customers sell their allocated shares in the immediate aftermarket. A "syndicate covering transaction" is generally defined as placing a bid or effecting a purchase to reduce a syndicate short position.

⁷ See Exchange Act Release No. 56206 (August 6, 2007), 72 FR 45094 (August 10, 2007).

⁸ See NASD Rule 6540(d)(1)(D)(iii).

⁹ See NASD Rule 6540(d)(1)(D)(ii).

⁵ See Exchange Act Release No. 38067 (December 20, 1996), 62 FR 520 (January 3, 1997).

pricing.¹⁰ The member must also provide notice to the Market Regulation Department upon the pricing of the distribution.¹¹ Additionally, members are prohibited from entering stabilizing bids pursuant to Rule 104 of Regulation M in the OTCBB.¹²

With respect to quotations in the ADF, FINRA's Operations Department may grant excused withdrawal status to a Registered Reporting ADF Market Maker, as defined in NASD Rule 4200A(a)(14), that is a distribution participant or affiliated purchaser in a distribution of an NMS stock in order to comply with the applicable restricted period under Regulation M.¹³ A member acting as manager (or in a similar capacity), or any member that is a distribution participant or affiliated purchaser in a distribution that does not have a manager, must notify FINRA's ADF Operations and the Market Regulation Department of a prospective distribution and request a withdrawal of each market maker's quotations.¹⁴ Members also must submit a written request to ADF Operations and the Market Regulation Department to rescind the market maker's excused withdrawal status and provide notice of the date and time of the pricing of the offering, the offering price, and the time the offering terminated.¹⁵

Proposed New FINRA Rule 5190

To clarify and streamline FINRA's rules in this area, FINRA is proposing to consolidate and house all Regulation M-related notice requirements in a single rule—proposed new FINRA Rule 5190 (Notification Requirements for Offering Participants). The scope of the current rules and information required would be expanded, as necessary, to impose consistent notice requirements relating to distributions of listed and unlisted securities. The proposed rule change would ensure that FINRA receives from its members pertinent distribution-related information in a timely fashion.

Proposed Rule 5190(c) sets forth the notice requirements applicable to distributions of listed and unlisted securities that are "covered securities" (as that term is defined under Regulation M) subject to a restricted period under Rule 101 or 102 of Regulation M. Specifically, proposed Rule 5190(c)(1)(A) would require members to determine, in accordance

with Regulation M, whether a distribution is subject to a one-day or five-day restricted period under Rule 101 of Regulation M, and provide written notice to FINRA of the members' determination and the basis for such determination.¹⁶ Additionally, pursuant to proposed Rule 5190(c)(1)(A), members would be required to include in the written notice the contemplated date and time of commencement of the restricted period, identifying the distribution participants and affiliated purchasers.

Members would be required to provide such notice no later than the business day prior to the first complete trading session of the applicable restricted period, unless later notification is necessary under specific circumstances.¹⁷ FINRA notes that where the principal market closes early, e.g., for a holiday, the shortened session would constitute a complete trading session for purposes of the proposed Rule. NASD Rule 2710(b)(10) requires that notice be provided at the time of filing the registration statement. However, for some distributions, particularly shelf offerings, the registration statement may be filed well in advance of commencement of the distribution. As a result, by the time the distribution takes place, the information previously provided by the member could be out-of-date or the ADTV or public float levels could have changed, in which case a different restricted period would apply.

The proposed rule change would eliminate the express requirement under FINRA rules that members request a UAR and would instead permit FINRA

to prescribe the form in which notice and the required information must be submitted to FINRA (including, as discussed above, notice of the member's independent determination regarding whether a restricted period applies).¹⁸ The proposed rule change also would eliminate the requirement in NASD Rule 2710(b)(10) that members submit a copy of the registration statement. The Market Regulation Department does not rely on the registration statement in monitoring member quoting and trading activity for purposes of Regulation M compliance. Moreover, FINRA believes that this requirement could potentially suggest that the Regulation M-related requirements are applicable only to registered offerings when, in fact, certain unregistered offerings, e.g., private placements and PIPEs, are subject to Regulation M and FINRA's notice requirements.

Proposed Rule 5190(c)(1)(B) would require that upon pricing a distribution that is subject to a restricted period under Rule 101 of Regulation M, members provide written notice to FINRA and the following information: The security name and symbol, the type of security, the number of shares offered, the offering price, the last sale before the distribution, the pricing basis (e.g., the prior day closing price, a negotiated price, last sale, etc.), the SEC effective date and time, the trade date and the restricted period. Consistent with proposed paragraph (c)(1)(A), members also would be required to identify the distribution participants and affiliated purchasers.

The notice under proposed Rule 5190(c)(1)(B) would be required to be submitted no later than the close of business the next business day following the pricing of the distribution, unless later notification is necessary under specific circumstances. NASD Rule 2710(b)(11) requires that notice of pricing be provided no later than the close of business the day the offering terminates; however, most members immediately provide notice of pricing today. In addition to being consistent

¹⁶ While the proposed rule change would place the onus of determining the applicable restricted period on the member for all distributions, as a practical matter, FINRA would accept notification by a member that the maximum five-day restricted period applies to a prospective distribution, without providing the basis for that determination. If, on the other hand, a member were to assert that a one-day or no restricted period applied to a particular distribution, FINRA would require that the member demonstrate the basis for that determination.

¹⁷ In most instances, FINRA would expect to receive notification within the prescribed time frame, but may permit later notification in limited circumstances. Such determination would be made by the Market Regulation Department on a case-by-case basis. For example, there may be instances where the nature of the transaction has made it impossible to provide timely notice (e.g., a private investment in public equity ("PIPE") offering is commenced and priced on the same day, and thus the member could not have provided notice on the business day prior to the first complete trading session of the applicable restricted period). Current NASD Rule 4619A(f)(1), which sets forth the notice and withdrawal of quotations requirements applicable to ADF participants for purposes of compliance with Regulation M, similarly contemplates later notification where necessary under the specific circumstances.

¹⁸ FINRA will announce the form and method of transmission in a *Notice* to be published on its Web site. For example, such form could include the request for a UAR in connection with distributions of Nasdaq-listed securities.

Additionally, FINRA notes that the Market Regulation Department monitors for purposes of compliance with Regulation M on behalf of the Nasdaq Exchange pursuant to a Regulatory Services Agreement (RSA). The Market Regulation Department will continue to generate UARs on behalf of the Nasdaq Exchange under the RSA to assist firms in determining the applicable restricted period, as well as applicable Nasdaq passive market making limits, under Regulation M with respect to Nasdaq-listed securities pursuant to Nasdaq Exchange rules.

¹⁰ See NASD Rule 6540(d)(1)(D)(i).

¹¹ See NASD Rule 6540(d)(1)(D)(iv).

¹² See NASD Rule 6540(d)(1)(D)(ii).

¹³ See NASD Rule 4619A(f).

¹⁴ See NASD Rule 4619A(f)(1).

¹⁵ See NASD Rule 4619A(f)(3).

with current practice, the proposed rule change would ensure that FINRA gets timely pricing information in instances where a distribution does not terminate for weeks or even months after pricing.

Finally, proposed Rule 5190(c)(1)(C) would require that members provide written notice of the cancellation or postponement of any distribution for which prior notice of commencement of the restricted period has been provided to FINRA. Members would be required to provide such notice immediately upon the cancellation or postponement of the distribution.

Proposed Rule 5190(c)(2) would require that any member that is an issuer or selling security holder in a distribution of any security that is a covered security subject to a restricted period under Rule 102 of Regulation M comply with the notice requirements of proposed Rule 5190(c)(1), unless another member has assumed responsibility in writing for compliance therewith. The proposed provision would ensure that FINRA receives notice of any distribution in which a member is participating as an issuer or selling security holder, to the extent that notice of such distribution has not already been provided under proposed Rule 5190.

Proposed Rule 5190(d) sets forth the notice requirements applicable to distributions of listed and unlisted securities that are considered "actively traded" securities and thus are not subject to a restricted period under Rule 101 of Regulation M.¹⁹ In connection with such distributions, pursuant to proposed Rule 5190(d)(1), members would be required to provide written notice to FINRA of the member's determination that no restricted period applies and the basis for such determination. Proposed Rule 5190(d)(1) would require that such notice be provided at least one business day prior to the pricing of the distribution, unless later notification is necessary under specific circumstances.

Proposed Rule 5190(d)(2) would require that upon pricing a distribution of a security that is considered "actively traded" under Rule 101 of Regulation M, members provide written notice to FINRA and the same pricing-related information that would be required under proposed paragraph (c)(1)(B) (discussed above). Also consistent with proposed paragraph (c)(1)(B), proposed Rule 5190(d)(2) would require members to identify the distribution participants

and affiliated purchasers, and provide the required notice no later than the close of business the next business day following the pricing of the distribution, unless later notification is necessary under specific circumstances.²⁰

Under paragraphs (c)(1) and (d) of proposed Rule 5190, a member acting as manager (or in a similar capacity) of the distribution would have the obligation to submit the requisite notice to FINRA. However, if no member is acting as manager (or in a similar capacity), then each member that is a distribution participant or affiliated purchaser would be required to provide notice to FINRA, unless another FINRA member has assumed responsibility in writing for compliance with the notice requirement. This is consistent with the current approach under NASD Rule 2710(b)(10).²¹

Finally, proposed Rule 5190(e) would require members to provide notice to FINRA of penalty bids or syndicate covering transactions in connection with an offering of an OTC Equity Security. Members would be required to provide notice to FINRA of their intention to conduct such activity, prior to imposing the penalty bid or engaging in the first syndicate covering transaction, as well as pertinent information, such as identification of the security and its symbol and the date such activity will occur. In addition, members would be required to subsequently confirm such activity within one business day of completion, including identification of the security and its symbol, the total number of shares and the date(s) of such activity. The proposed provision is substantially similar to NASD Rule 6540(d)(1)(D)(iii). By including these notice requirements in proposed Rule 5190, the proposed rule change would clarify that they apply to distributions of all OTC Equity Securities and are not limited to distributions of OTCBB-eligible securities.

In light of the foregoing, FINRA is proposing to delete paragraphs (b)(10) and (11) from NASD Rule 2710 and Incorporated NYSE Rule 392 in its entirety. The notice requirements of NASD Rule 2710(b)(10) and (11) and Incorporated NYSE Rule 392(a) largely would be incorporated in proposed Rule

5190. Because Incorporated NYSE Rule 392(b) is specific to the NYSE marketplace, FINRA is not proposing that these requirements become part of the Consolidated FINRA Rulebook.

Proposed Amendments to Marketplace Rules

FINRA also is proposing to clarify the scope and application of the Regulation M-related requirements that are in the current OTCBB and ADF marketplace rules.²² FINRA is proposing to adopt new FINRA Rule 6470 (Withdrawal of Quotations in an OTC Equity Security in Compliance with SEC Regulation M), which would (1) require a member that is a distribution participant, affiliated purchaser, selling security holder or issuer in a distribution of an OTC Equity Security that is a covered security subject to Rule 101 or Rule 102 of Regulation M to withdraw all quotations in the security during the restricted period; and (2) prohibit the entry of stabilizing bids for the OTC Equity Security pursuant to Rule 104 of Regulation M. Proposed Rule 6470 is substantially similar to NASD Rule 6540(d)(1)(D)(ii) and would clarify that the requirements apply not only to OTCBB-eligible securities, but to all OTC Equity Securities quoted in any inter-dealer quotation system (i.e., OTCBB and Pink Sheets). Thus, under the proposed rule change, the Regulation M-related provisions would be deleted from the OTCBB rules (specifically, paragraphs (d)(1)(D), (E) and (F) would be deleted from NASD Rule 6540) and comparable requirements would be housed in either proposed Rule 5190, as discussed above, or proposed Rule 6470.

Second, FINRA is proposing to make certain conforming changes to the Regulation M-related rules applicable to the ADF. Specifically, FINRA is proposing to amend NASD Rule 4619A(f) to conform to the language and structure of proposed Rule 6470. Thus, a Registered Reporting ADF Market

²² On May 23, 2008, FINRA filed proposed rule change SR-FINRA-2008-021, in which FINRA proposes, among other things, to adopt NASD Marketplace Rules 4200A, 4619A and 6540 as FINRA Rules 6220, 6275 and 6540, respectively, and the NASD Rule 6600 Series as the FINRA Rule 6400 Series, without material change, in the Consolidated FINRA Rulebook. Assuming Commission approval of SR-FINRA-2008-021 prior to the approval of this proposed rule change, FINRA will amend this filing, as necessary, to reflect such approval.

The Staff of the Commission ("Staff") also notes that FINRA has filed two other proposals related to NASD Rule 2710 previously (SR-NASD-2004-022 and SR-FINRA-2007-009) that are outstanding. The Staff has confirmed with FINRA that they will amend those filings to reflect the movement of NASD Rule 2710 to the Consolidated FINRA Rulebook.

¹⁹ The exclusion for "actively traded securities" removes from Rule 101 of Regulation M securities with an ADTV value of at least \$1 million where the issuer's common equity securities have a public float value of at least \$150 million.

²⁰ FINRA notes that a member that is an issuer or selling security holder in a distribution of an actively traded security that is subject to a restricted period under Rule 102 of Regulation M would be required to comply with the notice requirements under proposed Rule 5190(c)(2).

²¹ Members would be required to update the notice required under the proposed Rule, as necessary (e.g., a manager would update the notice where distribution participants are added after commencement of the restricted period).

Maker that is a distribution participant, affiliated purchaser, selling security holder or issuer in a distribution of an NMS stock that is a covered security subject to Rule 101 or 102 of Regulation M would be required to request an excused withdrawal of its quotations in the ADF in the offered security. FINRA believes that it is more appropriate to impose such obligation on the member that is posting the quotation, rather than require the manager of the distribution to do so on behalf of each member. FINRA also is proposing to amend NASD Rule 4200A, which sets forth the definitions applicable to the ADF rules, to make technical and conforming changes such as adding necessary references to Regulation M and deleting definitions that are currently not used in the ADF rules.

FINRA believes that the proposed rule change will significantly improve the clarity of the current rules and enhance the information FINRA receives, which will better enable FINRA to monitor member OTC quoting and trading for purposes of Regulation M compliance.

FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 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,²³ 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. The rules being adopted as part of the Consolidated FINRA Rulebook previously have been found to meet the statutory requirements, and FINRA believes that those rules have since proven effective in achieving the statutory mandates. In addition, FINRA believes that the proposed rule change will significantly improve the clarity of FINRA's current Regulation M-related rules and enhance FINRA's ability to monitor member OTC quoting and trading for purposes of Regulation M compliance.

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
- Send an e-mail to rule-comments@sec.gov. Please include File Number insert SR-FINRA-2008-039 on the subject line.

Paper Comments

- Send paper comments in triplicate to Florence Harmon, Acting Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2008-039. 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-2008-039 and should be submitted on or before September 2, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Florence Harmon,

Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58291; File No. SR-FINRA-2008-043]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Establish a Membership Waive-In Process and Fee Waiver for Certain NYSE Alternext U.S. LLC Member Organizations

August 1, 2008.

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 July 30, 2008, 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 prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

²⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

²³ 15 U.S.C. 78o-3(b)(6).