

Applicants agree that the order granting the requested relief will be subject to the following condition:

Applicants will comply with all provisions of rule 12d1-2 under the Act, except for paragraph (a)(2) to the extent that it restricts any Fund of Funds from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

**Florence E. Harmon,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61747; File No. SR-FINRA-2010-010]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Update a Cross-Reference Within FINRA Rule 0150

March 19, 2010.

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 March 9, 2010, 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, II and III, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> which renders the proposal effective upon receipt of this filing by 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

FINRA is proposing to amend FINRA Rule 0150 (Application of Rules to Exempted Securities Except Municipal Securities) to update a cross-reference to reflect a change adopted in the 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

FINRA is in the process of developing a new consolidated rulebook (“Consolidated FINRA Rulebook”).<sup>4</sup> This process involves FINRA submitting to the Commission for approval a series of proposed rule changes over time to adopt rules in the Consolidated FINRA Rulebook. The phased adoption and implementation of those rules necessitates periodic amendments to update rule cross-references in the Consolidated FINRA Rulebook.

The proposed rule change would update a rule cross-reference to reflect changes adopted in the Consolidated FINRA Rulebook. Specifically, the proposed rule change would update FINRA Rule 0150 to reflect the incorporation into the Consolidated FINRA Rulebook of FINRA Rule 5160 (Disclosure of Price and Concessions in Selling Agreements) and the deletion of NASD Rule 2770 (Disclosure of Price in Selling Agreements). FINRA Rule 5160 was approved by the Commission on January 25, 2010<sup>5</sup> and will become effective on April 19, 2010.

FINRA has filed the proposed rule change for immediate effectiveness. The

<sup>4</sup> 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).

<sup>5</sup> See Securities Exchange Act Release No. 61417 (January 25, 2010), 75 FR 5157 (February 1, 2010) (Order Approving File No. SR-FINRA-2009-086).

implementation date for the proposed rule change will be April 19, 2010, the date on which the previously approved rule change will also be implemented.

###### 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>6</sup> 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 the proposed rule change will provide greater clarity to members and the public regarding FINRA’s rules.

##### 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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup>

At any time within 60 days 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,

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

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6). Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that at least five days prior to the instant filing, FINRA provided the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change.

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

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](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2010-010 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-2010-010. 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,<sup>9</sup> 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, 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 and on its Web site at [www.finra.org](http://www.finra.org). 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-2010-010 and

should be submitted on or before April 19, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61753; File No. 4-595]

### Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing of Proposed Minor Rule Violation Plan

March 22, 2010.

Pursuant to Section 19(d)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19d-1(c)(2) thereunder,<sup>2</sup> notice is hereby given that on March 19, 2010, EDGA Exchange, Inc. ("EDGA Exchange" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") copies of proposed minor rule violations with sanctions not exceeding \$2,500 which would not be subject to the provisions of Rule 19d-1(c)(1) of the Act<sup>3</sup> requiring that a self-regulatory organization promptly file notice with the Commission of any final disciplinary action taken with respect to any person or organization.<sup>4</sup> In accordance with paragraph (c)(2) of Rule 19d-1 of the Act, the Exchange proposed to designate certain specified rule violations as minor rule violations, and requests that it be relieved of the reporting requirements regarding such violations, provided it gives notice of such violations to the Commission on a quarterly basis. EDGA Exchange proposes to include in its proposed MRVP the policies and procedures currently included in EDGA Exchange

<sup>10</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19d-1(c)(2).

<sup>3</sup> 17 CFR 240.19d-1(c)(1).

<sup>4</sup> The Commission adopted amendments to paragraph (c) of Rule 19d-1 to allow self-regulatory organizations ("SROs") to submit for Commission approval plans for the abbreviated reporting of minor disciplinary infractions. See Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984). Any disciplinary action taken by an SRO against any person for violation of a rule of the SRO which has been designated as a minor rule violation pursuant to such a plan filed with the Commission shall not be considered "final" for purposes of Section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding \$2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies.

Rule 8.15 ("Imposition of Fines for Minor Violation(s) of Rules").<sup>5</sup>

According to the Exchange's proposed MRVP, under Rule 8.15, the Exchange may impose a fine (not to exceed \$2,500) on a member or an associated person with respect to any rule listed in Rule 8.15.01. The Exchange shall serve the person against whom a fine is imposed with a written statement setting forth the rule or rules violated, the act or omission constituting each such violation, the fine imposed, and the date by which such determination becomes final or by which such determination must be contested. If the person against whom the fine is imposed pays the fine, such payment shall be deemed to be a waiver of such person's right to a disciplinary proceeding and any review of the matter under EDGA Exchange rules. Any person against whom a fine is imposed may contest the Exchange's determination by filing with the Exchange a written response, at which point the matter shall become a disciplinary proceeding.

Under Rule 8.15.01, violations of the following rules would be appropriate for disposition under the minor rule violations plan: Rule 2.5. Interpretation .04, Firm Element Continuing Education Requirement; Rule 3.5 Advertising Practices; Rule 4.2 and Interpretations thereunder, requiring the submission of responses to Exchange requests for trading data within specified time period; Rule 4.2 and Interpretations thereunder, related to the requirement to furnish Exchange-related order, market and transaction data, as well as financial or regulatory records and information; Rule 11.15, requirement to identify short sale orders as such; Rule 11.16, requirement to comply with locked and crossed market rules; and Rule 12.11, Interpretation .01 and Exchange Act Rule 604—Failure to properly display limit orders.

EDGA Exchange proposed to include the rule violations listed in Rule 8.15.01 in its minor rule violation plan. Upon approval of the plan, the Exchange will provide the Commission a quarterly report of actions taken on minor rule violations under the plan. The quarterly

<sup>5</sup> On March 12, 2010, the Commission approved EDGA Exchange's application for registration as a national securities exchange, including the rules governing EDGA Exchange. See Securities Exchange Act Release No. 61698, 75 FR 13151 (March 22, 2010). In the approval order, the Commission noted that EDGA Exchange Rule 8.15 provides for the imposition of fines for minor rule violations pursuant to a minor rule violation plan. Accordingly, the Commission noted that as a condition to the operation of EDGA Exchange, the Exchange must file a minor rule violation plan with the Commission.

<sup>9</sup> The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov/>.