

Securities and Exchange Commission,
100 F Street, NE., Washington, DC
20549-1090.

All submissions should refer to File Number SR-BX-2009-052. 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 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 Number SR-BX-2009-052 and should be submitted on or before October 6, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-22107 Filed 9-14-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60635; File No. SR-FINRA-2007-024]

Self-Regulatory Organizations; Financial Industry Regulatory, Inc.; Order Approving Proposed Rule Change as Modified by Amendment No. 1 Thereto Amending Rule 2320 Regarding Best Execution and Interpositioning

September 8, 2009.

On November 27, 2007, the Financial Industry Regulatory Authority, Inc. ("FINRA") 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 amend NASD Rule 2320, Best Execution and Interpositioning. On April 13, 2009, FINRA filed Amendment No. 1 to the proposed rule change. The proposed rule change was published for comment in the **Federal Register** on April 24, 2009.³ The Commission received no comments regarding the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

In its filing, FINRA proposed to amend NASD Rule 2320, which governs members' obligations regarding best execution and interpositioning.⁴ Rule 2320(a) provides that, in any transaction for or with a customer or a customer of another broker-dealer, a member must use "reasonable diligence to ascertain the best market for the subject security," so that the resulting price to the customer is "as favorable as possible under prevailing market conditions."⁵ A number of factors will be considered in determining whether the member exercised reasonable diligence, including the character of the market for the security, the size and type of the transaction, and the terms and conditions of the order that resulted in the transaction.⁶

Currently, Rule 2320(b) prohibits a member from interposing a third party between the member and the best available market for a security, unless the member "can demonstrate that to his knowledge at the time of the transaction the total cost or proceeds of

the transaction * * * was better than the prevailing inter-dealer market for the security."⁷ In addition, a member's obligations to its customer "are generally not fulfilled" under the current Rule when interposing a third party, unless the member can show that the interpositioning "reduced the costs of the transactions to the customer."⁸

With this rule change, FINRA proposed to apply the standards governing best execution, which are set forth in Rule 2320(a), to interpositioning. As such, a member interposing a third party will have to use "reasonable diligence to ascertain the best market for the subject security," so that the resulting price to the customer is "as favorable as possible under prevailing market conditions."⁹ FINRA also proposed to make conforming amendments to other NASD and FINRA rules to reflect the redesignation of Rule 2320.

The Commission has carefully reviewed the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered securities association¹⁰ and, in particular, Section 15A(b)(6) of the Act,¹¹ which requires 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.

In stating that interpositioning generally does not fulfill a member's obligation to its customer unless that interpositioning "reduced the costs of the transactions to the customer," the current rule contains a presumption against interpositioning.¹² FINRA stated in its filing that the presumption is overbroad and may not accurately reflect the realities of the current market. The Commission understands

⁷ See NASD Rule 2320(b).

⁸ *Id.*

⁹ See NASD Rule 2320(a).

¹⁰ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78o-3(b)(6).

¹² See, e.g., *In re Thomson & McKinnon*, Securities Exchange Act Release No. 8310 (May 8, 1968). In that proceeding, an NASD member firm interposed broker-dealers between itself and the best available market, and the added transaction cost was borne by its customers. The Commission found that, "[i]n view of the obligation of a broker to obtain the most favorable price for his customer, where he interposes another broker-dealer between himself and a third broker-dealer, he prima facie has not met that obligation and he has the burden of showing that the customer's total cost or proceeds of the transaction is the most favorable obtainable under the circumstances."

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 59788 (April 17, 2009), 74 FR 18777 ("Notice").

⁴ NASD Rule 2320 paragraph (a) governs best execution and paragraph (b) governs interpositioning.

⁵ See NASD Rule 2320(a).

⁶ *Id.*

¹⁴ 17 CFR 200.30-3(a)(12).

FINRA's argument that the rule, as currently written, may be overbroad. There have been a number of changes in the markets since the time the rule was adopted by the NASD in 1968. However, the Commission believes that there continue to be opportunities for unscrupulous participants in the marketplace to interposition third parties in a securities transaction between themselves and their customers to the disadvantage of those customers.¹³ The Commission expects FINRA, when it finds evidence of interpositioning by members that was detrimental to the customer, to charge member firms or associated persons, as appropriate, with violations of its rules.

The Commission notes that its approval of this rule change is not an indication that interpositioning is no longer an issue. Rather, it is meant to reflect changes in the market place that have occurred since 1968 when the rule was adopted.¹⁴ The Commission notes that, even with this rule change, the cost to the customer under the proposed rule will "remain a crucial factor in determining whether a member has fulfilled its best execution obligations under Rule 2320," including transactions involving interposed third parties.¹⁵ The Commission also notes that interpositioning "that is unnecessary or violates a member's general best execution obligations—either because of unnecessary costs to the customer or improperly delayed executions—would still be prohibited."¹⁶ In this respect, the Commission takes comfort from FINRA's representations that interpositioning that harms a customer violates NASD Rule 2440 and FINRA Rule 2010.¹⁷

The proposed rule will thus continue to prohibit interpositioning that adversely affects the customer, and the cost to the customer will remain a central part of that determination. The Commission expects FINRA to diligently pursue such conduct by members.¹⁸

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-FINRA-2007-024), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-22109 Filed 9-14-09; 8:45 am]

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DEPARTMENT OF STATE

[Public Notice 6760]

Culturally Significant Objects Imported for Exhibition Determinations: "Art of the Samurai: Japanese Arms and Armor, 1156-1868"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Art of the Samurai," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Metropolitan Museum of Art, New York, NY, from on or about October 19, 2009, until on or about January 10, 2010, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/632-6473). The address is U.S. Department of State, SA-5, L/PD, Fifth Floor, Washington, DC 20522-0505.

¹⁹ 17 CFR 200.30-3(a)(12).

Dated: September 8, 2009.

Maura M. Pally,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. E9-22173 Filed 9-14-09; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF STATE

[Public Notice 6761]

Determination and Certification Related to Colombian Armed Forces Under Section 7046(B) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2009 (Div. H, Pub. L. 111-8)

Pursuant to the authority vested in the Secretary of State, including under section 7046 (b)(1)(B) and section 7046(b)(2) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2009 (Div. H, Pub. L. 111-8 ("FY 2009 SFOAA")), I hereby determine, certify, and report that the Colombian Armed Forces are meeting the conditions contained in section 7046(b)(1)(B) and section 7046(b)(2).

The Department of State has periodically consulted with internationally recognized human rights organizations regarding the Colombian Armed Forces' progress in meeting the above-mentioned conditions, as provided in section 7046(c) of the FY 2009 SFOAA.

This Determination and Certification shall be published in the **Federal Register** and copies shall be transmitted to the appropriate committees of Congress.

Dated: September 8, 2009.

James B. Steinberg,

Deputy Secretary of State.

[FR Doc. E9-22174 Filed 9-14-09; 8:45 am]

BILLING CODE 4710-29-P

DEPARTMENT OF STATE

[Public Notice 6759]

Determination Under the Foreign Assistance Act and the Department of State, Foreign Operations, and Related Programs Appropriations Acts

Pursuant to section 654(c) of the Foreign Assistance Act of 1961, as amended, notice is hereby given that the Deputy Secretary of State has made a determination pursuant to section 620H of the Foreign Assistance Act, and section 7021 of the Department of State,

¹³ See, e.g., *In re Andrew P. Gonchar and Polyviou T. Polyviou*, Securities Exchange Act Release No. 34-60506 (August 14, 2009).

¹⁴ See Notice, *supra* note 3, at 18778.

¹⁵ *Id.* at 18778.

¹⁶ *Id.* at 18779.

In addition to the proposed rule language, other FINRA and NASD rules would continue to govern the handling of customer orders. In particular, FINRA Rule 2010 requires that members observe high standards of commercial honor and just and equitable principles of trade, and NASD Rule 2440 requires that members charge fair prices and commissions in their dealings with customers.

¹⁷ *Id.* at 18778 n.4.

¹⁸ See *In re Andrew P. Gonchar and Polyviou T. Polyviou*, *supra* note 13.