

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61417; File No. SR-FINRA-2009-086)

January 25, 2010

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change to Adopt FINRA Rule 5160 (Disclosure of Price and Concessions in Selling Agreements) in the Consolidated FINRA Rulebook

On December 2, 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 2770 (Disclosure of Price in Selling Agreements) as FINRA Rule 5160 in the consolidated FINRA rulebook without material change. The proposed rule change was published for comment in the Federal Register on December 22, 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 61171 (December 15, 2009), 74 FR 68081 (“Notice”).

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).

The Commission believes that the proposed rule change is appropriate to assure the integrity of the public offering process. The Commission notes that new FINRA Rule 5160 will continue to require that selling syndicate agreements or selling group agreements⁶ set forth the price at which securities are to be sold to the public or the formula by which such price can be ascertained and state clearly to whom and under what circumstances concessions, if any, may be allowed. The Commission also notes that FINRA is adopting NASD Rule 2770 into the consolidated FINRA rulebook as FINRA Rule 5160 with a new title, but without material change.

⁵ 15 U.S.C. 78o-3(b)(6).

⁶ In the Notice, FINRA noted that the terms “selling group” and “selling syndicate” are defined in NASD Rules 0120(p) and (q), respectively. FINRA also represented that other than to reflect the new conventions of the consolidated FINRA rulebook, FINRA does not propose to alter these two definitions, which will be addressed later in the rulebook consolidation process.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁷ that the proposed rule change (SR-FINRA-2009-086) 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

⁷ 15 U.S.C. 78s(b)(2)

⁸ 17 CFR 200.30-3(a)(12)