

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57133; File No. SR-FINRA-2007-038)

January 11, 2008

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Delay Implementation of Certain Rule Changes Approved in SR-NASD-2005-146

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 21, 2007, 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 substantially prepared by FINRA. FINRA filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders it effective upon filing with the Commission.⁵ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ FINRA has requested that the Commission waive the 5 day pre-filing notice and 30-day operative delay required by Rule 19b-4(f)(6)(iii), 17 CFR 240.19b-4(f)(6)(iii). See discussion *infra* Section III.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to delay the final implementation date of the rule changes approved in SR-NASD-2005-146,⁶ which is currently scheduled for January 14, 2008, until 60 days after Commission approval of SR-NASD-2007-041.

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 those 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 26, 2007, the Commission approved SR-NASD-2005-146, which, among other things, amended IM-2110-2⁷ to expand the scope to apply to OTC equity securities and modify the minimum price-improvement standards for securities trading in

⁶ See Securities Exchange Act Release No. 55351 (February 26, 2007), 72 FR 9810 (March 5, 2007) (order approving SR-NASD-2005-146). See also NASD Notice to Members 07-19 (April 2007) (announcing the effective date of the rule changes in SR-NASD-2005-146).

⁷ Currently, IM-2110-2 generally prohibits a member from trading for its own account in an exchange-listed security at a price that is equal to or better than an unexecuted customer limit order in that security, unless the member immediately thereafter executes the customer limit order at the price at which it traded for its own account or better.

decimals. The amendments relating to OTC equity securities and the minimum price-improvement provisions are scheduled to become effective on January 14, 2008.⁸

On June 27, 2007, FINRA filed a proposed rule change (SR-NASD-2007-041) to amend the minimum price-improvement standards in IM-2110-2 that were approved as part of SR-NASD-2005-146.⁹ FINRA has proposed to implement the changes in SR-NASD-2007-041 on the final implementation date of SR-NASD-2005-146. SR-NASD-2007-041 remains pending at the Commission.

To provide additional time for the Commission to consider and act upon the proposed changes in SR-NASD-2007-041 and, if SR-NASD-2007-041 is approved, allow firms sufficient time to make the required technological changes to implement the proposed changes in SR-NASD-2007-041, FINRA is proposing that the final implementation date of SR-NASD-2005-146 currently scheduled for January 14, 2008 be delayed until 60 days after Commission approval of SR-NASD-2007-041.¹⁰ In doing so, the proposed minimum price-improvement provisions in SR-NASD-2007-041, if approved, would become effective on the final implementation date of SR-NASD-2005-146. FINRA will announce the final implementation date of SR-NASD-2005-146 and the effective date of the changes in SR-NASD-2007-041 in a Regulatory Notice. FINRA has filed the proposed rule change for immediate effectiveness. FINRA proposes to implement the proposed rule change as described herein.

⁸ See Securities Exchange Act Release No. 56822 (November 20, 2007), 72 FR 67326 (November 28, 2007) (notice of filing and immediate effectiveness of SR-FINRA-2007-023).

⁹ See File No. SR-NASD-2007-041.

¹⁰ Certain other rule changes that were approved as part of SR-NASD-2005-146 became effective on July 26, 2007 and are not effected by this proposed rule change. See FINRA Member Alert dated June 20, 2007.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹¹ 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. FINRA believes that the proposed rule change is consistent with the provisions of the Act noted above because extending the final implementation date of SR-NASD-2005-146 will ensure that the Commission has adequate time to act on the proposed changes in SR-NASD-2007-041 and, if SR-NASD-2007-041 is approved, ensure firms have sufficient time to make the necessary changes to comply with the new price-improvement standards.

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: (1) significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for thirty days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the

¹¹ 15 U.S.C. 78o-3(b)(6).

public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6)¹³ thereunder.¹⁴

A proposed rule change filed under Commission Rule 19b-4(f)(6)¹⁵ normally does not become operative prior to thirty days after the date of filing. FINRA requests that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii), and designate the proposed rule change to become operative immediately to allow FINRA to delay the implementation date of SR-NASD-2005-146 currently scheduled for January 14, 2008 until 60 days after Commission approval of SR-NASD-2007-041. The Commission believes that waiving the 30-day operative date is consistent with the protection of investors and the public interest because it would allow FINRA to delay immediately the implementation date of SR-NASD-2005-146, which is currently scheduled to become operative on January 14, 2008. For these reasons, the Commission designates the proposed rule change as operative upon filing.¹⁶

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ FINRA has requested that the Commission waive the requirement that it provide 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 date on which FINRA filed the proposed rule change pursuant to Rule 19b-4(f)(6)(iii). The Commission hereby grants this request. See 17 CFR 240.19b-4(f)(6)(iii).

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ For the purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the 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-FINRA-2007-038 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2007-038. 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 10:00 am and 3:00 pm. 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-2007-038 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Florence E. Harmon
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).