

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60648; File No. SR-FINRA-2009-048)

September 10, 2009

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change to Adopt FINRA Rule 5230 (Payments Involving Publications that Influence the Market Price of a Security) in the Consolidated FINRA Rulebook

On July 21, 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 amend the By-Laws of FINRA Regulation, Inc. (“FINRA Regulation”) to adopt NASD Rule 3330 (Payment Designed to Influence Market Prices, Other than Paid Advertising) as FINRA Rule 5230 in the consolidated FINRA rulebook, with several changes to clarify the scope of the rule. The proposed rule change was published for comment in the Federal Register on August 7, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 60422 (August 3, 2009), 74 FR 39725.

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).

⁵ 15 U.S.C. 78q-3(b)(6).

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. The Commission believes that the proposed rule change should continue to protect investors and promote the maintenance of fair, orderly and efficient markets by modernizing and clarifying the regulations that apply when payments are made in connection with the publication or circulation of media that could have an effect on the market price of any security. The Commission notes that the types of media that could have an effect on the market price of a security have changed since NASD Rule 3330 was last amended. Therefore, the updating of the list of media in proposed FINRA Rule 5230 will modernize the regulation.

The Commission also notes that payments for the publication of information relating to securities are permitted in certain circumstances under Section 17(b) of the Securities Act and under NASD Rule 2711(h)(13). Therefore, the Commission believes that the amendment to the rule will clarify that proposed FINRA Rule 5230 is consistent with these and other regulations where such payments are explicitly permitted.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁶ that the proposed rule change (SR-FINRA-2009-048) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Florence E. Harmon
Deputy Secretary

⁶ 15 U.S.C. 78s(b)(2)

⁷ 17 CFR 200.30-3(a)(12)