

Exchange states that this change is designed to prevent market orders from being executed at prices that are far away from the primary market opening price, when that market ultimately opens.

### III. Discussion

After careful review, 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 exchange.<sup>9</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>10</sup> which requires, among other things, that a national securities exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Previously, the Exchange opened for trading in a security once the primary market had opened in that security. The Exchange now proposes to permit trading to begin at 8:30 a.m. Chicago time (9:30 a.m. Eastern time), without regard to whether the primary market opened in that security. The Commission believes that this proposed change is consistent with the Act and does not raise any new regulatory issues. Further, the proposal is consistent with the definition of "regular trading hours" under Rule 600(b)(64) of the Act.<sup>11</sup> In addition, the Exchange has proposed a related change to eliminate the opening cross order type, which executes at the primary market opening price. As the Exchange will no longer link its opening to the primary market, the Commission believes that eliminating the cross order type is consistent with the Act as it eliminates the potential for those order types to violate the protected quotations of other markets. Finally, the Exchange's proposal to prevent IOC market orders from being accepted until the primary market opens in that security or two

in that security occurs in that market on or after 8:30 a.m. The Exchange has stated that two senior officers of the Exchange might decide that it is appropriate to allow IOC market orders to be accepted if, for example, the primary market has announced that it will open later than expected, but other markets are open to provide additional liquidity. Telephone conversation between Ellen Neely, President and General Counsel, CHX, Richard Holley III, Senior Special Counsel, Division, Commission, and Sonia Trocchio, Special Counsel, Division, Commission (October 18, 2007).

<sup>9</sup> 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).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 17 CFR 242.600(b)(64).

senior officers of the Exchange otherwise determine that it is appropriate to accept such orders is likewise consistent with the Act and the protection of investors and the public interest and should allow IOC market orders entered on CHX to be executed at prices that are closely related to the primary market opening price.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-CHX-2007-23) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57133; File No. SR-FINRA-2007-038]

### 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

January 11, 2008.

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 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 Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission.<sup>5</sup> The Commission is publishing this notice to

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

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

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

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

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

<sup>5</sup> 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.

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 delay the final implementation date of the rule changes approved in SR-NASD-2005-146,<sup>6</sup> 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-2110-2<sup>7</sup> to expand the scope to apply to OTC equity securities and modify the minimum price-improvement standards for securities trading in decimals. The amendments relating to OTC equity securities and the minimum price-improvement provisions are scheduled to become effective on January 14, 2008.<sup>8</sup>

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-

<sup>6</sup> 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).

<sup>7</sup> 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.

<sup>8</sup> 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).

NASD-2005-146.<sup>9</sup> 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.<sup>10</sup> 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.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>11</sup> 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 public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6)<sup>13</sup> thereunder.<sup>14</sup>

A proposed rule change filed under Commission Rule 19b-4(f)(6)<sup>15</sup> 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.<sup>16</sup>

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 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](mailto: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 a.m. and 3 p.m. 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

<sup>9</sup> See File No. SR-NASD-2007-041.

<sup>10</sup> 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.

<sup>11</sup> 15 U.S.C. 78o-3(b)(6).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 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).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> 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).

should be submitted on or before February 8, 2008.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57142; File No. SR-NFA-2007-07]

**Self-Regulatory Organizations; National Futures Association; Notice of Filing and Immediate Effectiveness of Proposed Amendments to Compliance Rules 2-7 and 2-30 and the Interpretive Notices Entitled "NFA Compliance Rule 2-4: Confidentiality Language in Release Agreements," "Compliance Rule 2-9: Enhanced Supervisory Requirements," "Compliance Rule 2-9: Special Supervisory Requirements for Members Registered as Broker-Dealers Under Section 15(b)(11) of the Securities Exchange Act of 1934," "NFA Compliance Rule 2-37: Fair Commissions," "NFA Compliance Rules 2-7 and 2-24 and Registration Rule 401: Proficiency Requirements for Security Futures Products," and "NFA Compliance Rule 2-30(b): Risk Disclosure Statement for Security Futures Contracts"**

January 14, 2008.

Pursuant to Section 19(b)(7) of the Securities Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-7 under the Act,<sup>2</sup> notice is hereby given that on December 7, 2007, National Futures Association ("NFA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which Items have been substantially prepared by NFA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. NFA also has filed the proposed rule change with the Commodity Futures Trading Commission ("CFTC").

NFA, on December 5, 2007, requested that the CFTC make a determination that review of the proposed rule change of NFA is not necessary. By letter dated December 17, 2007, the CFTC notified

NFA of its determination not to review the proposed rule change.<sup>3</sup>

### I. Self-Regulatory Organization's Description of the Proposed Rule Change

In July 2007, the New York Stock Exchange merged its member regulation, enforcement, and arbitration functions into National Association of Securities Dealers, Inc. ("NASD"), which then became the Financial Industry Regulatory Authority, Inc. ("FINRA"). Since several of NFA's rules and interpretive notices reference NASD, the amendments replace those references with references to FINRA.

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

In its filing with the Commission, NFA has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. NFA 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

Section 15A(k) of the Act<sup>4</sup> makes NFA a national securities association for the limited purpose of regulating the activities of NFA members ("Members") who are registered as brokers or dealers in security futures products under Section 15(b)(11) of the Act.<sup>5</sup> The amendments replace the references to the NASD with references to FINRA in rules and interpretive notices that apply to Members that are registered as security futures brokers or dealers under Section 15(b)(11).

##### 2. Statutory Basis

The rule change is authorized by, and consistent with, Section 15A(k) of the Act.<sup>6</sup> The proposed changes are nothing more than technical amendments to replace references to NASD with references to FINRA.

<sup>3</sup> See letter from Lawrence B. Patent, Deputy Director, CFTC, to Thomas W. Sexton, III, General Counsel, NFA ("Letter").

<sup>4</sup> 15 U.S.C. 78o-3(k).

<sup>5</sup> 15 U.S.C. 78o(b)(11).

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

### B. Self-Regulatory Organization's Statement on Burden on Competition

The rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants, or Others

NFA did not publish the rule change to the membership for comment. NFA did not receive comment letters concerning the rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The CFTC notified NFA of its determination not to review the proposed rule change.<sup>7</sup> The proposed rule change has become effective on December 17, 2007.

Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refilled in accordance with the provisions of Section 19(b)(1) of the Act.<sup>8</sup>

### 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-NFA-2007-07 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-NFA-2007-07. 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

<sup>7</sup> See Letter, *supra* note 3.

<sup>8</sup> 15 U.S.C. 78s(b)(1).

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

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

<sup>2</sup> 17 CFR 240.19b-7.