

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57252; File No. SR-FINRA-2007-025)

February 1, 2008

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to FINRA's NYSE Rules 421, 440F, and 440G

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ notice is hereby given that on December 4, 2007, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by FINRA. FINRA has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 under the Act,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to 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 amend FINRA's NYSE Rules 421 (Periodic Reports), 440F (Public Short Sale Transactions Effected on the Exchange) and 440G (Transactions in Stock and Warrants for the Accounts of Members, Allied Members and Member

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a et seq.

³ 17 CFR 240.19b-4.

⁴ 17 CFR 240.19b-4(f)(6).

Organizations)⁵ to conform such rules with the SEC's amendments to Rule 10a-1⁶ ("SEC Rule 10a-1") and Regulation SHO⁷ under the Act.⁸ The proposed rule change makes conforming changes to FINRA's NYSE Rules 421, 440F and 440G, consistent with the proposed rule change by the New York Stock Exchange, LLC ("NYSE") to its versions of Rules 421, 440F and 440G.⁹

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

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Rule 421. Periodic Reports

No Change.

••• Supplementary Material: -----

.10 Short positions. — Member organizations for which the Exchange is the designated examining authority are required to report "short" positions, including odd lots, in each

⁵ FINRA has incorporated into its rulebook certain rules of NYSE, including NYSE Rules 421, 440F and 440G. These incorporated NYSE rules apply solely to those members of FINRA that also are members of NYSE on or after July 30, 2007 ("Dual Members"), until such time as FINRA adopts a consolidated rulebook applicable to all of its members. The incorporated NYSE rules apply to the same categories of persons to which they applied as of July 30, 2007. In applying the incorporated NYSE rules to Dual Members, FINRA also has incorporated the related interpretive positions set forth in the NYSE Rule Interpretations Handbook and NYSE Information Memos.

⁶ 17 CFR 240.10a-1.

⁷ 17 CFR 240.200-203.

⁸ See Securities Exchange Act Release No. 55970 (June 28, 2007), 72 FR 36348 (July 3, 2007).

⁹ See File No. SR-NYSE-2007-62 ("NYSE's filing").

stock or warrant listed on the Exchange, and in each other stock or warrant not listed on the Exchange which is not otherwise reported to another United States securities exchange or securities association, using such automated format and methods as prescribed by the Exchange. Such reports must include customer and proprietary positions and must be made at such times and covering such time period as may be designated by the Exchange.

Member organizations for which the Exchange is not the designated examining authority must report "short" positions to the self-regulatory organization which is its designated examining authority ("DEA") if such DEA has a requirement for such reports. If the DEA does not have such a reporting requirement, then such member organization must comply with the provisions of Rule 421.

The term "designated examining authority" means the self-regulatory organization which has been assigned responsibility for examining a member organization for compliance with applicable financial responsibility rules. (See Rule 17d-1 under the Securities Exchange Act of 1934 (the "Exchange Act").)

"Short" positions to be reported are those resulting from "short" sales as defined in Rule 200(a) of the Securities and Exchange Commission's Regulation SHO, but excluding positions that meet the following requirements:

- (1) any sale by any person, for an account in which he has an interest, if such person owns the security sold and intends to deliver such security as soon as is possible without undue inconvenience or expense;
- (2) any sale of a security covered by a short sale rule on a national securities exchange (except a sale to a stabilizing bid complying with Rule

104 of Regulation M) effected with the approval of such exchange which is necessary to equalize the price of such security thereon with the current price of such security on another national securities exchange which is the principal exchange market for such security;

(3) any sale of a security for a special arbitrage account by a person who then owns another security by virtue of which he is, or presently will be, entitled to acquire an equivalent number of securities of the same class as the securities sold; provided such sale, or the purchase which such sale offsets, is effected for the bona fide purpose of profiting from a current difference between the price of security sold and the security owned and that such right of acquisition was originally attached to or represented by another security or was issued to all the holders of any such class of securities of the issuer;

(4) any sale of a security registered on, or admitted to unlisted trading privileges on, a national securities exchange effected for a special international arbitrage account for the bona fide purpose of profiting from a current difference between the price of such security on a securities market not within or subject to the jurisdiction of the United States and on a securities market subject to the jurisdiction of the United States; provided the seller at the time of such sale knows or, by virtue of information currently received, has reasonable grounds to believe that an offer enabling him to cover such sale is then available to him in such

foreign securities market and intends to accept such offer immediately;

and

(5) any sale by an underwriter, or any member of a syndicate or group participating in the distribution of a security, in connection with an over-allotment of securities, or any lay-off sale by such a person in connection with a distribution of securities through rights or a standby underwriting commitment.

[resulting from sales specified in clauses (1), (6), (7), (8), and (10) of paragraph (e) of Rule 10a-1 under the Exchange Act.] Also to be excluded are “short” positions carried for other member organizations reporting for themselves.

Only one report should be made for each stock or warrant in which there is a short position. If more than one “account” has a short position in the same stock or warrant, the combined aggregate should be reported.

NOTE: A member organization which does not carry customers’ margin accounts and does not clear its own transactions may obtain an exemption from reporting by notifying the Exchange in writing.

.20 - .50 No Change.

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Rule 440F. Public Short Sale Transactions Effected on the Exchange

••• Supplementary Material: -----

Reports on Form SS20

.10 Requirements for filing. No Change.

General Instructions.—

(1) – (2) No Change.

(3) [Exclude short-exempt sales, except for short-exempt sales in securities subject to the SEC’s Pilot Order (SEA Release No. 34-50104)(July 28, 2004), as amended by the SEC’s Second Pilot Order (SEA Release No. 34-50747)(November 29, 2004), and any subsequent orders.

(4)] Exclude transactions in rights.

[(5)](4) If there are no reportable transactions for a specific week, a form should be filed marked “None”.

[(6)](5) File this report with Credit Regulation Department, via the New York Stock Exchange’s Electronic Filing Platform (“EFP”), as soon as possible, but not later than 12:00 noon on the Friday of the week following the week covered by the report.

[(7)](6) Inquiries should be addressed to Credit Regulation Department, telephone 212-656-8572.

[(8)](7) Reserved.

Specific Instructions.—

(1) No Change.

(2) Short sales for hedging accounts and short sales executed as such for arbitrage accounts should be included. [Sales made on a “short-exempt” basis for arbitrage accounts should not be included.]

(3) No Change.

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Rule 440G. Transactions in Stocks and Warrants for the Accounts of Members, Allied Members and Member Organizations

••• Supplementary Material: -----

.10 Requirements for filing. No Change.

Instructions.—

(1) – (8) No Change.

(9) [Short-exempt sales are to be included with total sales only. Solely for purposes of Rule 440G and Form 121, “short-exempt sales” in securities subject to the SEC’s Pilot Order (SEA Release 34-50104)(July 28, 2004), as amended by the SEC’s Second Pilot Order (SEA Release 34-50747)(November 29, 2004), and any subsequent orders, are to be included with short sales on Form 121.

(10)] Transactions are to be classified into one of the following three categories

(a) – (c) No Change.

[(11)](10) If a reporting member or member organization does not have reportable transactions during a given week, a Form 121 report should be filed marked “No transactions”.

[(12)](11) The Member Firm Regulation Division will consider written requests for exemption from filing REGULAR weekly reports on Form 121. Exemption may be granted for a period of time not to exceed one year, renewable annually if the applicant does not expect to have any, or expects to have only an occasional, reportable transaction during this time. THE EXEMPTION, WHEN GRANTED, IS FROM FILING REGULARLY EACH WEEK AND, IF DURING THE EXEMPTION PERIOD A REPORTABLE TRANSACTION IS EFFECTED, A FORM 121 REPORT, FOR THE WEEK IN WHICH THE TRANSACTION(S) TOOK PLACE, MUST BE FILED IMMEDIATELY.

~~[(13)]~~(12) File this report with the Credit Regulation Department, via the New York Stock Exchange's Electronic Filing Platform ("EFP") as soon as possible but not later than 12:00 noon on the Friday following the week covered by the report.

~~[(14)]~~(13) Inquiries should be addressed to the Credit Regulation Department, telephone 212-656-8572.

~~[(15)]~~(14) No Change.

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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 these 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 aspects of such statements.

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

1. Purpose

FINRA is proposing changes to FINRA's NYSE Rules 421, 440F and 440G to conform these rules with the SEC's amendments to SEC Rule 10a-1 and Regulation SHO. The SEC's amendments, among other things, remove the short sale price test in SEC Rule 10a-1 and remove the "short exempt" marking requirements in Regulation SHO.

In light of the SEC's amendments, the NYSE has proposed amending its Rules 421,¹⁰ 440F¹¹ and 440G.¹² As detailed in the NYSE's filing, the proposed amendments would remove: (1) the references to SEC Rule 10a-1 in NYSE Rule 421 and (2) the references to the "short exempt" marking requirements in NYSE Rules 440F and 440G. NYSE has proposed to make the changes effective upon filing.

Given these changes, FINRA is proposing to make conforming changes to FINRA's NYSE Rules 421, 440F and 440G to ensure consistency with NYSE's versions of Rules 421, 440F and 440G.¹³

¹⁰ NYSE Rule 421 (Periodic Reports) contains the NYSE's short interest reporting requirements.

¹¹ NYSE Rule 440F requires members and member organizations to report round-lot short sale transactions for public customers.

¹² NYSE 440G requires members and member organizations to report round-lot short sale transactions for members, allied members, and member organizations.

¹³ Pursuant to Rule 17d-2 under the Exchange Act, NASD, NYSE, and NYSE Regulation, Inc. entered into an agreement ("Agreement") to reduce regulatory duplication for firms that are Dual Members by allocating certain regulatory responsibilities for selected NYSE rules from NYSE Regulation to FINRA. The Agreement includes a list of all of those rules ("Common Rules") for which FINRA has assumed examination, enforcement and surveillance responsibilities under the Agreement relating to compliance by Dual Members to the extent that such responsibilities involve member firm regulation. See Securities Exchange Act Release No. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (Notice of Filing and Order Approving and Declaring Effective a Plan for the Allocation of Regulatory Responsibilities). The Common Rules are the same NYSE rules that FINRA has incorporated into its rulebook. See Securities Exchange Act Release No. 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Incorporate Certain NYSE Rules Relating to Member Firm Conduct; File No. SR-NASD-2007-054). Paragraph 2(b) of the Agreement sets forth procedures regarding proposed changes by either NYSE or FINRA to the substance of any of the Common Rules.

2. Statutory Basis

The proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁴ which requires, among other things, that FINRA rules must 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 proposed rule change is necessary and appropriate to comply with the amendments to SEC Rule 10a-1 and Regulation SHO and to maintain consistency with the NYSE's amendments to its Rules 421, 440F and 440G.

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: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶

¹⁴ 15 U.S.C. 78o-3(b)(6).

¹⁵ 15 U.S.C. 78s(b)(3)(A).

FINRA has requested that the Commission waive the five-day pre-filing notice¹⁷ and the requirement that the rule change, by its terms, not become operative for 30 days after the date of the filing.¹⁸ FINRA has requested that the effective date of the proposed rule change be the same as the effective date of the NYSE's amendments to NYSE Rules 421, 440F and 440G to ensure that FINRA's NYSE Rules 421, 440F and 440G maintain their status as Common Rules under the Agreement. The Commission believes that waiver of the five-day pre-filing notice and the 30-day operative delay¹⁹ is consistent with the protection of investors and the public interest, given that the compliance date for the Commission's amendments to Rule 10a-1 was July 6, 2007. In addition, waiver of these requirements will permit FINRA to implement its rule changes on the same date that proposed rule changes included in the NYSE's filing are implemented. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.

At any time within 60 days of the filing of the 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 furtherance of the purposes of the Act.

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

¹⁸ 17 CFR 240.19b-4(f)(6)(iii).

¹⁹ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2007-025 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-2007-025. 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 a.m. to 3:00

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-2007-025 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.²⁰

Florence E. Harmon
Deputy Secretary

²⁰ 17 CFR 200.30-3(a)(12).