

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57935; File No. SR-FINRA-2008-023)

June 6, 2008

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Violations Appropriate for Disposition Under FINRA's Minor Rule Violation Plan

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 May 27, 2008, 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 and II below, which Items have been substantially prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

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

FINRA proposes to amend NASD Interpretive Material ("IM") 9216³ to expand FINRA's Minor Rule Violation Plan ("MRVP") to include violations of options position and exercise limits and contrary exercise advice procedures. The text of the proposed rule change is available at FINRA, the Commission's Public Reference Room, and www.finra.org.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ FINRA has filed with the Commission a proposed rule change (SR-FINRA-2008-021) in which FINRA proposes, among other things, to adopt NASD IM-9216 as FINRA Rule 9217, without material change. Assuming Commission approval of this proposed rule change prior to the approval of SR-FINRA-2008-021, FINRA will amend SR-FINRA-2008-021, as necessary, to reflect such approval.

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 III 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would amend NASD IM-9216 to include in FINRA's MRVP violations of (1) options position and exercise limits under NASD Rule 2860(b)(3) and (b)(4), and (2) contrary exercise advice procedures under NASD Rule 2860(b)(23). NASD Rule 9216 sets forth FINRA's MRVP, which allows FINRA to impose a fine of up to \$2,500 on any member or person associated with a member for a minor violation of the rules identified in IM-9216 (known as "Minor Rule Violations"). The purpose of the MRVP is to provide meaningful sanctions for minor or technical violations of rules when the initiation of a formal disciplinary proceeding would be more significant than warranted. Minor Rule Violation letters also represent a useful tool for implementing the concept of progressive discipline.

Inclusion of a rule in the MRVP does not mean that all violations of that rule should be treated as Minor Rule Violations, and, in fact, significant violations would not be handled under the MRVP. Accordingly, under the MRVP, FINRA retains the discretion to bring full disciplinary proceedings for any violation of a rule included in the MRVP.

The NASD options rules contain provisions imposing limits on the size of an options position, and limits on the number of options contracts that can be exercised into shares of the

underlying security during a fixed period. To address inadvertent violations of these rules, due to among other things, miscounting, technical problems, or a misinterpretation of the position limit calculation methodologies, that in the judgment of FINRA do not materially affect the market, FINRA proposes adding violations of options position and exercise limits as eligible for disposition under the MRVP. Violations of these rules deemed to have a manipulative effect or intent would not be treated as Minor Rule Violations.

Options issued by The Options Clearing Corporation (i.e., exchange-traded options) have specific terms regarding whether options that can be settled only by delivery of the asset underlying the option (typically an equity security) will be automatically exercised at settlement. The NASD options rule has detailed “contrary exercise advice” (“CEA”) procedures describing the manner in which an option holder can elect not to exercise an option that normally would be exercised, or exercise an option contract that normally would expire worthless. To prevent option holders from unfairly exploiting after-hours news or market information that affects the price of the underlying security, the CEA notices must be submitted to the broker-dealer and by the broker-dealer to the OCC by certain specified cut-off times. Occasionally, due to technical problems or other inadvertent errors, firms fail to submit CEA notices within the applicable time limits. For those instances, FINRA proposes to have the flexibility to treat the violation as a Minor Rule Violation. Violations of the CEA rules that exploit or are intended to exploit after-hours news would not be treated as Minor Rule Violations.

FINRA notes that position and exercise limits and CEA violations are part of the MRVP of the options exchanges,⁴ therefore including them in FINRA’s plan would promote greater

⁴ See NASDAQ Options Rules, Chapter X, Section 7 (Penalty for Minor Rule Violations); Boston Options Exchange Rules, Chapter X, Section 2 (Penalty for Rule Violations); Chicago Board Options Exchange Rule 17.50 (Imposition of Fines for Minor Rule

consistency in sanctions among substantively similar rules enforced by FINRA and the options exchanges.

FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval. The effective date will be the date of Commission approval.

2. Statutory Basis

FINRA believes 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 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. FINRA believes that the proposed rule change is consistent with Section 15A(b)(7) of the Act⁶ in that it provides for the appropriate discipline for violation of FINRA rules. The proposed rule change also is consistent with Section 15A(b)(8) of the Act⁷ in that it furthers the statutory goals of providing a fair procedure for disciplining members and associated persons. FINRA believes that the addition of these violations to the MRVP will provide FINRA staff with the ability to provide meaningful sanctions for minor or technical violations of these rules when the initiation of a formal disciplinary proceeding would be more significant than warranted.

Violations); American Stock Exchange Rule 590. Part 1 (General Rule Violations); Philadelphia Stock Exchange Rules F-15 (Minor Infractions of Position/Exercise Limits and Hedge Exemptions) and F-35 (Violations of Exercise and Exercise Advice Rules for Noncash-Settled Equity Option Contracts); International Securities Exchange Rule 1614 (Imposition of Fines for Minor Rule Violations).

⁵ 15 U.S.C. 78o-3(b)(6).

⁶ 15 U.S.C. 78o-3(b)(7).

⁷ 15 U.S.C. 78o-3(b)(8).

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. 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-2008-023 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-FINRA-2008-023. 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. and 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-2008-023 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Section 15 of the Act and the rules and regulations thereunder applicable to a national securities association.⁸ In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers,

⁸ In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

brokers, or dealers, to fix minimum profits, to impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members.⁹

The Commission further believes that FINRA's proposal to sanction members and associated persons who fail to submit CEAs in a timely manner or limit the size of an option position or the number of option contracts is consistent with Sections 15A(b)(7) and 15A(b)(8) of the Act,¹⁰ which require that the rules of an association enforce compliance with, and provide appropriate discipline for, violations of Commission and FINRA rules. In addition, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d-1(c)(2) under the Act,¹¹ which governs minor rule violation plans. The Commission believes that the proposed rule change should strengthen FINRA's ability to carry out its oversight and enforcement responsibilities in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation.

In approving this proposed rule change, the Commission in no way minimizes the importance of compliance with FINRA's rules and all other rules subject to the imposition of fines under the MRVP. The Commission believes that the violation of any self-regulatory organization rules, as well as Commission rules, is a serious matter. However, the MRVP provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that FINRA will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more

⁹ 15 U.S.C. 78o-3(b)(6).

¹⁰ 15 U.S.C. 78o-3(b)(7) and(b)(8).

¹¹ 17 CFR 240.19d-1(c)(2).

or less than the recommended amount is appropriate for a violation under the MRVP or whether a violation requires formal disciplinary action.

FINRA has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice thereof in the Federal Register. The Commission hereby grants that request. FINRA's proposal is substantially similar to those of other options exchanges, which previously have been approved by the Commission.¹² The Commission does not believe that FINRA's proposal raises any novel regulatory issues, and no comments were received on any of these earlier proposals. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,¹³ for approving the proposed rule change prior to the thirtieth day after publication of the notice thereof in the Federal Register.

¹² See, e.g., Securities Exchange Act Release No. 57528 (March 19, 2008), 73 FR 15826 (March 25, 2008) (SR-Phlx-2008-18).

¹³ 15 U.S.C. 78s(b)(2).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act¹⁴ and Rule 19d-1(c)(2) under the Act,¹⁵ that the proposed rule change (SR-FINRA-2008-023), be, and hereby is, approved and declared effective on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Florence E. Harmon
Acting Secretary

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 17 CFR 240.19d-1(c)(2).

¹⁶ 17 CFR 200.30-3(a)(12); 17 CFR 200.30-3(a)(44).