

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58227; File No. SR-FINRA-2008-033)

July 25, 2008

Self-Regulatory Organizations: Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto, to Adopt FINRA Rule 4560 (Short-Interest Reporting) in the Consolidated FINRA Rulebook

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 June 23, 2008, 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, II, and III below, which Items have been substantially prepared by FINRA. On July 16, 2008, FINRA submitted Amendment No. 1 to the proposed rule change. 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 adopt the short interest reporting requirements (NASD Rule 3360 and Incorporated NYSE Rules 421(1) and 421.10) as FINRA Rule 4560 in the consolidated FINRA rulebook.

The text of the proposed rule change is attached as Exhibit 5 to this rule filing.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 is available at FINRA, the Commission's Public Reference Room, and <http://www.finra.org/RulesRegulation/RuleFilings/2008RuleFilings/P038813>. 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

As part of the process of developing the new consolidated rulebook ("Consolidated FINRA Rulebook"),³ FINRA is proposing to adopt the short interest reporting requirements in NASD Rule 3360 and Incorporated NYSE Rules 421(1) and 421.10 as FINRA Rule 4560 in the Consolidated FINRA Rulebook.

NASD Rule 3360 and Incorporated NYSE Rules 421(1) and 421.10 set forth FINRA's short interest reporting requirements.⁴ NASD Rule 3360 requires members to

³ The current FINRA rulebook consists of two sets of rules: (1) NASD Rules and (2) rules incorporated from NYSE ("Incorporated NYSE Rules") (together referred to as the "Transitional Rulebook"). The Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). Dual Members also must comply with NASD Rules. For more information about the rulebook consolidation process, see FINRA Information Notice, March 12, 2008 (Rulebook Consolidation Process).

⁴ Incorporated NYSE Rules 421(2) and 421.40 require members carrying margin accounts for customers to report certain aggregate debit and free credit balances.

report short positions⁵ in OTC Equity Securities⁶ and exchange-listed securities not otherwise reported to another self-regulatory organization (“SRO”),⁷ and Incorporated NYSE Rules 421(1) and 421.10 require members to report short positions in NYSE-listed securities. Members must report total short positions in all customer and proprietary accounts as of the designated settlement dates and in the manner so prescribed.⁸ Currently, the rules require such information to be reported twice a month, which in turn, is then made publicly available on an aggregate basis twice a month.⁹

Currently, firms report short interest positions in NYSE-listed securities through the NYSE’s Electronic Filing Platform (“EFP”) and all other securities through FINRA’s Regulation Filing Applications (“RFA”) system or the Securities Industry Automation Corporation (“SIAC”). As of June 30, 2008, FINRA will consolidate the collection of short interest data, and firms will be required to report short interest positions in all

Those provisions will be addressed in a separate filing and therefore are not being addressed here.

⁵ Short positions required to be reported under the rules are those resulting from “short sales” as the term is defined in Rule 200(a) of Regulation SHO, subject to certain limited exceptions. See NASD Rule 3360(b)(1).

⁶ The term “OTC Equity Securities” refers to any equity security that is not listed on a national securities exchange. See NASD Rule 3360(b)(3).

⁷ It is the responsibility of each member firm to ensure that it is reporting accurate short interest data, including confirming that issue symbols are active and valid as of the designated settlement date. See Notice to Members 06-20 (April 2006).

⁸ Non-self-clearing broker-dealers generally are considered to have satisfied their reporting requirement by making appropriate arrangements with their respective clearing organizations. See Notice to Members 03-08 (February 2003).

⁹ A schedule of FINRA’s designated settlement dates can be found on its Web site at www.finra.org. See also Notice to Members 07-24 (May 2007).

securities to FINRA using the RFA system; consequently, firms will no longer be able to report any of their short interest positions using EFP or SIAC.¹⁰

Given that the short interest requirements in each of the rules are substantially similar, FINRA is proposing to adopt these requirements as part of the Consolidated FINRA Rulebook, subject only to certain non-substantive changes. Most notably, because FINRA will now be the primary collector of consolidated short interest data for its members in all securities (rather than only if such positions in exchange-listed securities are not reported to another SRO), FINRA is not retaining the text in NASD Rule 3360 that limits short interest reportable to FINRA to those positions in exchange-listed securities “not otherwise reported to another self-regulatory organization.”

As noted above, FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following 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,¹¹ 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 short interest reporting requirements, which are proposed to be transferred to the Consolidated FINRA Rulebook, previously have been found to meet the statutory

¹⁰ See Regulatory Notice 08-13 (March 2008).

¹¹ 15 U.S.C. 78o-3(b)(6).

requirements, and FINRA believes such requirements have since proven effective in achieving the statutory mandates.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

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-2008-033 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-2008-033. 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-2008-033 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.¹²

Florence E. Harmon
Acting Secretary

¹² 17 CFR 200.30-3(a)(12).