

those securities, for a total of 312 offering documents. The staff therefore estimates that 104 respondents would make 312 responses by adding the new disclosure statement to approximately 312 written offering documents. The staff therefore estimates that the annual burden associated with the rule 7d-2 disclosure requirement would be 52 hours (312 offering documents  $\times$  10 minutes per document). The total annual cost of these burden hours is estimated to be \$16,432 (52 hours  $\times$  \$316 per hour of attorney time).<sup>6</sup>

These burden hour estimates are based upon the Commission staff's experience and discussions with the fund industry. The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. These estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

Compliance with the collection of information requirements of the rule is mandatory and is necessary to comply with the requirements of the rule in general. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher, Director/CIO, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA, 22312; or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

<sup>6</sup> The Commission's estimate concerning the wage rate for attorney time is based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association ("SIFMA"). The \$316 per hour figure for an attorney is from SIFMA's *Management & Professional Earnings in the Securities Industry 2009*, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

Dated: August 9, 2010.

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62664; File No. SR-FINRA-2010-037]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Amend FINRA Rule 5190 (Notification Requirements for Offering Participants)

August 9, 2010.

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 July 27, 2010, Financial Industry Regulatory Authority, Inc. ("FINRA") 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 substantially been prepared by FINRA. 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 Rule 5190 (Notification Requirements for Offering Participants) relating to the notice requirements applicable to distributions of "actively traded" securities, as defined under SEC Regulation M.

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA and at the Commission's Public Reference Room.

#### 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 Rule 5190 imposes certain notice requirements on members participating in distributions of listed and unlisted securities and is designed to ensure that FINRA receives pertinent distribution-related information from its members in a timely fashion to facilitate its Regulation M compliance program.

Rule 5190(d) sets forth the notice requirements applicable to distributions of securities that are considered "actively traded" and thus are not subject to a restricted period under Rule 101 of Regulation M.<sup>3</sup> In connection with such distributions, pursuant to Rule 5190(d)(1), members are required to provide written notice to FINRA of the member's determination that no restricted period applies and the basis for such determination. Members must provide such notice at least one business day prior to the pricing of the distribution, unless later notification is necessary under specific circumstances. Rule 5190(d)(2) requires that upon pricing a distribution of an "actively traded" security, members provide written notice to FINRA, along with pricing-related information such as the offering price, the last sale before the distribution and the pricing basis. Notice of pricing must be provided no later than the close of business the next business day following the pricing of the distribution, unless later notification is necessary under specific circumstances.

FINRA is proposing to amend Rule 5190(d) to require that notice under subparagraphs (1) and (2) be provided at the same time; specifically, no later than the close of business the next business day following the pricing of the distribution. While the timing of notice under subparagraph (1) would change, the information required would not change. Thus, pursuant to the proposed rule change, members will be required to provide a single notice after pricing of the distribution and will be required to provide all of the same information that they provide today.

FINRA has determined that it will be sufficient for members to provide notice

<sup>3</sup> The exclusion for "actively traded" securities removes from Rule 101 of Regulation M securities with an "ADTV" value, as defined in Rule 100 of Regulation M, of at least \$1 million where the issuer's common equity securities have a public float value of at least \$150 million.

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

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

of their determination that no restricted period applies following the pricing of the distribution. The proposed rule change will not impact FINRA's Regulation M surveillance program.<sup>4</sup>

Additionally, a significant number of distributions of "actively traded" securities evolve quickly after the market close and are priced overnight before the next trading session. Thus, members frequently do not have sufficient advance knowledge of their participation in the distribution to provide notice to FINRA at least one business day prior to pricing and in such instances are unable to comply with the express terms of Rule 5190(d)(1). FINRA then must make a determination whether later notification was necessary under the circumstances, in accordance with the rule. The proposed rule change will clarify members' notice obligations in the context of such distributions.

The proposed rule change will be effective on 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,<sup>5</sup> 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 will streamline FINRA's Regulation M-related notice requirements and, combined with FINRA's existing Regulation M compliance program, will protect investors.<sup>6</sup>

### *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 of Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate 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 or disapprove the 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](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2010-037 on the subject line.

### *Paper Comments*

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

All submissions should refer to File Number SR-FINRA-2010-037. 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 Web site viewing and printing 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-2010-037 and should be submitted on or before September 3, 2010.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62663; File No. SR-NASDAQ-2010-077]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving a Proposed Rule Change Relating to Pricing for Direct Circuit Connections

August 9, 2010.

On June 21, 2010, The NASDAQ Stock Market LLC ("NASDAQ" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to establish pricing for 10Gb direct circuit connections and codify pricing for 1Gb direct circuit connections for customers who are not co-located in NASDAQ's datacenter. The proposed rule change was published for comment in the **Federal Register** on July 6, 2010.<sup>3</sup> The Commission received no comment letters on the proposal. This order approves the proposed rule change.

In its proposal, NASDAQ proposed to establish fees for direct 10Gb circuit connections, and codify fees for direct circuit connections capable of supporting up to 1Gb, for customers who are not co-located at the Exchange's datacenter. NASDAQ represented that it already makes available to co-located customers a 10Gb circuit connection and charges for each a \$1000 initial installation charge as well as an ongoing

<sup>7</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> See Securities Exchange Act Release No. 62392 (July 6, 2010), 75 FR 38857 ("Notice").

<sup>4</sup> See e-mail from Lisa Horrigan, Associate General Counsel, FINRA, to Elizabeth Sandoe, Branch Chief and Brad Gude, Special Counsel, Division of Trading and Markets, Commission, dated August 6, 2010 ("FINRA Email").

<sup>5</sup> 15 U.S.C. 78o-3(b)(6).

<sup>6</sup> See FINRA E-mail, *supra* note 4.