

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 the Exchange. 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-BSE-2008-22 and should be submitted on or before May 2, 2008.

#### 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 Act and the rules and regulations thereunder applicable to a national securities exchange<sup>13</sup> and, in particular, with the requirements of Section 6(b) of the Act.<sup>14</sup> In particular, the Commission finds that the Exchange's proposal is consistent with Section 6(b)(4) of the Act,<sup>15</sup> which requires that the rules of the Exchange provide for the equitable allocation or reasonable dues, fees, and other charges among its members and other persons using its facilities. The Commission notes that the proposal conforms Linkage Fees with those fees charged on other broker-dealer executions.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> for approving the proposed rule change prior to the 30th day after the date of publication of the notice of the filing thereof in the **Federal Register**. The Commission notes that the Make or Take Pricing for M or T Non-Penny Pilot Classes was eliminated on March 28, 2008.<sup>17</sup> Further, because the Exchange is proposing to reduce the fee charged from \$0.50 per contract to \$0.20 per contract for those M or T Non-Penny Pilot Classes not included in the Penny Pilot Program expansion, granting accelerated approval on a retroactive basis would allow the Exchange to

implement a lower fee for market participants executing Linkage Orders at the same time as the Exchange's related fee changes, which should benefit investors and reduce confusion.<sup>18</sup>

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act<sup>19</sup> that the proposed rule change (SR-BSE-2008-22) is hereby approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57622; File No. SR-FINRA-2008-012]

#### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Technical Amendments to Incorporated NYSE Rule Interpretation 344/02

April 4, 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 April 4, 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") a proposed rule change as described in Items I and II below, which items have been prepared substantially 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,<sup>3</sup> which renders the proposal effective upon receipt of this filing by 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 Incorporated NYSE Rule Interpretation 344/02 (Research Analysts and Supervisory Analysts) (the "Interpretation") to make a non-substantive, technical change to the Interpretation text.<sup>4</sup>

Below is the text of the proposed rule change. Proposed deletions are in [brackets].

\* \* \* \* \*

#### Rule 344 Research Analysts and Supervisory Analysts

/01 No Change.

/02 Foreign Research Analysts

#### Exemption

No change.

#### Supervisory Review

No Change.

#### Disclosure

In publishing or otherwise distributing globally branded research reports partially or entirely prepared by a foreign research analyst, a member organization must prominently disclose:

(1) each affiliate contributing to the research report;

(2) the names of the foreign research analysts employed by each contributing affiliate;

(3) that such research analysts are not registered/qualified as research analysts with the NYSE and/or NASD; and

(4) that such research analysts may not be associated persons of the member organization and therefore may not be subject to the NYSE Rule 472 restrictions on communications with a subject company, public appearances and trading securities [company, public appearances and trading securities] held by a research analyst account.

The disclosures required by this Rule must be presented on the front page of the research report or the front page must refer to the page on which the disclosures can be found. In electronic research reports, a member may hyperlink to the disclosures. References and disclosures must be clear, comprehensive and prominent.

<sup>4</sup> As part of the consolidation of NASD and NYSE Member Regulation, FINRA incorporated into its rulebook certain NYSE rules related to member firm conduct ("Incorporated NYSE Rules"). As a result, the current FINRA rulebook consists of two sets of rules: (1) NASD Rules and (2) the Incorporated NYSE Rules. While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to members of both FINRA and the NYSE, referred to as Dual Members.

<sup>13</sup> In approving this rule, the Commission notes that it has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>14</sup> 15 U.S.C. 78f(b).

<sup>15</sup> 15 U.S.C. 78f(b)(4).

<sup>16</sup> 15 U.S.C. 78s(b)(2).

<sup>17</sup> See note 4 *supra*.

<sup>18</sup> See note 8 *supra* and accompanying text.

<sup>19</sup> 15 U.S.C. 78s(b)(2).

<sup>20</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> 17 CFR 240.19b-4(f)(6).

*Record Keeping*

No change.

*Application of the Federal Securities Laws, Rules and Regulations and Self-Regulatory Organization Rules*

No change.

*Effect of Exemption on Associated Person Status*

No change.

*Globally-Branded Research Report*

No change.

*Mixed-Team Research Report*

No change.

*Affiliate*

No change.

/03-/04 No change.

\* \* \* \* \*

## 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 a non-substantive, technical rule change to Incorporated NYSE Rule Interpretation 344/02 (Research Analysts and Supervisory Analysts) to delete superfluous language from the Interpretation that should not be part of the text. The Interpretation was approved by the Commission on February 6, 2008,<sup>5</sup> and is scheduled to become effective upon publication of a Regulatory Notice announcing the approval. The superfluous language was

inadvertently included in the rule text of the original proposed rule change.<sup>6</sup>

FINRA has filed the proposed rule change for immediate effectiveness. The effective date and the implementation date will be the date of filing, April 4, 2008.

#### 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A of the Act, including Section 15A(b)(6) of the Act,<sup>7</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, 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 clarify the Interpretation by removing unnecessary language from the text.

### 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 Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of the filing.<sup>10</sup> However, Rule 19b-

4(f)(6)(iii)<sup>11</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has requested that the Commission waive the 30-day pre-operative delay and designate the proposed rule change to become operative upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the amendment merely removes duplicative language from the Interpretation that was inadvertently included in the February 2008 order. This duplicative language could only serve to confuse parties in attempting to comply with the Interpretation. Thus, the Commission designates the proposal to become operative upon filing.<sup>12</sup>

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 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-2008-012 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-2008-012. 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

determined to waive this requirement to allow FINRA to file the proposed technical amendment without delay.

<sup>11</sup> *Id.*

<sup>12</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the impact of the proposed rule on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>6</sup> See *id.*

<sup>7</sup> 15 U.S.C. 78o-3(b)(6).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 17 CFR 240.19b-4(f)(6)(iii). Pursuant to Rule 19b-4(f)(6)(iii) under the Act, FINRA is required to give 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 of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has requested that the Commission waive the five-day pre-filing notice requirement. The Commission has

<sup>5</sup> See Securities Exchange Act Release No. 57278 (February 6, 2008); 73 FR 8086 (February 12, 2008); Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change as Modified by Amendment No. 1 to Amend an Exemption to NASD Rule 1050 and NYSE Rule Interpretation 344/02 for Certain Research Analysts Employed By a Member's Foreign Affiliate Who Contribute to the Preparation of a Member's Research Report; File No. SR-FINRA-2007-010.

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-2008-012 and should be submitted on or before May 2, 2008.

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. 34-57609; File No. SR-NSCC-2008-01]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule To Amend the Rules With Regard to the Formula Used Within the Stock Borrow Program

April 3, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on March 18, 2008, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by NSCC.

NSCC filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>2</sup> and Rule 19b-4(f)(4)<sup>3</sup> thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

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

The purpose of the rule change is to modify Addendum C of NSCC's rules with respect to the formula used in NSCC's stock borrow program to determine the order of priority among members from whom NSCC will borrow securities made available by those members.

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

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>4</sup>

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

In the course of daily operations, NSCC's Continuous Net Settlement System ("CNS") may need more shares of a security than shares made available by member deliveries. In order to improve the efficiency of the clearing system in dealing with these situations, NSCC implemented automated stock borrow procedures to satisfy the need for shares that are not filled through normal deliveries from members.

NSCC members that wish to participate in the stock borrow program notify NSCC each day of the securities those members have on deposit at The Depository Trust Company ("DTC") that they intend to make available to NSCC through the stock borrow program. The stock borrow program has two separate cycles: the daytime cycle and the nighttime cycle.<sup>5</sup> Members choose

whether to participate in the stock borrow program and whether to participate in one or both cycles.

After NSCC processes regular deliveries, shares needed to satisfy CNS deliveries typically are borrowed from members who have made their securities available through the stock borrow program with the lending member's DTC position being debited for the number of shares loaned in the stock borrow program. Borrowed shares are recorded as a long position in the lending member's CNS subaccount until shares are delivered back to the lender.

Prior to this rule change, NSCC had used a formula to determine the order of priority among members from which NSCC would borrow shares. First, NSCC assigned each member a random allocation number for each security the member made available for borrowing. Then a factor was developed for each member by dividing the percentage of the member's average loans as they related to total NSCC borrowings by the percentage of the member's average fees paid for trade comparison, trade recording, and clearance as they related to the total of these fees for all members. Each member's random allocation number was multiplied by the factor to produce an adjusted random number per security for each member. Each potential borrow was then sequenced using the adjusted random number with the lowest adjusted random number having the first priority for borrowing.

NSCC is proposing to simplify the process by eliminating the formula and using a random allocation algorithm to determine the order of priority among members from which NSCC will borrow shares.<sup>6</sup> Using a random allocation algorithm to determine the order of priority in which NSCC will borrow securities made available by members within the stock borrow program would make processing more consistent with other current processing routines already utilized by NSCC.

NSCC proposes to implement the changes set forth in this filing on March 28, 2008. Members will be advised of the implementation date through issuance of NSCC Important Notices.

The proposed rule change is consistent with Section 17A of the Act,<sup>7</sup> as amended, because it removes

borrowed during the daytime processing cycle and vice versa.

<sup>6</sup> This random allocation algorithm is already used by NSCC to determine other priorities. NSCC uses random allocation algorithms routinely. For example, CNS uses a random allocation methodology whereby, after securities are received by NSCC from members making deliveries to CNS, they are then allocated to other members that are expecting receipt of those securities.

<sup>7</sup> 15 U.S.C. 78q-1.

<sup>2</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>3</sup> 17 CFR 240.19b-4(f)(4).

<sup>4</sup> The Commission has modified the text of the summaries prepared by NSCC.

<sup>5</sup> The daytime and nighttime cycles are separate processes. Securities made available to be borrowed during the nighttime processing cycle are not

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

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