

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 rules@sec.gov. Please include File Number SR-DTC-2009-04 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-DTC-2009-04. 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 Section, 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 DTC and on DTC's Web site at http://www.dtcc.com/downloads/legal/rule_filings/2009/dtc/2009-04.pdf. 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-DTC-2009-04 and should be submitted on or before March 12, 2009.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.⁴

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-3429 Filed 2-18-09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59382; File No. SR-FINRA-2008-064]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Amend NASD Interpretive Material (IM) 2110-2 (Trading Ahead of Customer Limit Order)

February 11, 2009.

I. Introduction

On December 17, 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"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend NASD Interpretive Material (IM) 2110-2 (Trading Ahead of Customer Limit Order) with respect to the determination of the minimum price improvement obligation in an OTC equity security priced below \$1.00 where there is no published current inside spread or there is only a one-sided quote. The proposed rule change was published for comment in the **Federal Register** on December 31, 2008.³ The Commission received no comment letters on the proposed rule change.

II. Description of the Proposed Rule Change

IM-2110-2 (commonly referred to as the "Manning Rule") generally prohibits a member from trading for its own account at prices that would satisfy a customer's limit order unless the member immediately thereafter executes the customer limit order at the price at which it traded for its own account or at a better price. Under amendments to IM-2110-2 that the Commission approved on September 12, 2008,⁴ and that became effective on November 11, 2008,⁵ IM-2110-2 sets forth the minimum level of price improvement, depending on the price of the customer limit order, that a member must provide in order to trade ahead of an unexecuted customer limit order without triggering

the protections provided by the Manning Rule.

The minimum price improvement tiers set forth in IM-2110-2 are as follows:

(1) For customer limit orders priced greater than or equal to \$1.00, the minimum amount of price improvement required is \$0.01 for NMS stocks and the lesser of \$0.01 or one-half (1/2) of the current inside spread for OTC equity securities;

(2) For customer limit orders priced greater than or equal to \$.01 and less than \$1.00, the minimum amount of price improvement required is the lesser of \$0.01 or one-half (1/2) of the current inside spread;

(3) For customer limit orders priced less than \$.01 but greater than or equal to \$0.001, the minimum amount of price improvement required is the lesser of \$0.001 or one-half (1/2) of the current inside spread;

(4) For customer limit orders priced less than \$.001 but greater than or equal to \$0.0001, the minimum amount of price improvement required is the lesser of \$0.0001 or one-half (1/2) of the current inside spread;

(5) For customer limit orders priced less than \$0.0001 but greater than or equal to \$0.00001, the minimum amount of price improvement required is the lesser of \$0.00001 or one-half (1/2) of the current inside spread;

(6) For customer limit orders priced less than \$0.00001, the minimum amount of price improvement required is the lesser of \$0.000001 or one-half (1/2) of the current inside spread; and

(7) For customer limit orders priced outside the best inside market, the minimum amount of price improvement required must either meet the requirements set forth above or the member must trade at a price at or inside the best inside market for the security.

Therefore, if a firm is holding a customer limit order to buy priced at \$.75 and the applicable minimum price improvement standard is \$.01, the firm would be permitted to buy at \$.76 or higher without triggering the requirements of IM-2110-2.

The proposed rule change is intended to provide members with an alternative method of calculating the minimum price improvement in cases where a member receives a limit order for an OTC equity security priced below \$1.00 and there is no quoted market. The minimum price-improvement standards are either a fixed amount as noted above or one-half (1/2) of the current inside spread. However, where there is no current inside spread, the minimum price-improvement standard defaults to

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 59138 (December 22, 2008), 73 FR 80482.

⁴ See Securities Exchange Act Release No. 58532 (September 12, 2008), 73 FR 54649 (September 22, 2008) (order approving SR-NASD-2007-041).

⁵ See *Regulatory Notice* 08-49 (September 2008).

⁴ 17 CFR 200.30-3(a)(12).

the fixed amount which, in certain circumstances, can lead to an anomalous result. For example, where a member receives a customer limit order priced at \$.01 and there is no current published inside spread, the minimum price-improvement standard would still be equal to \$.01, which would require the member to sell at \$.00 (\$.01 minus \$.01) or buy at \$.02 (\$.01 plus \$.01) to avoid triggering the customer limit order (depending on whether the customer order is a buy or sell order). Therefore, the current rule could have unduly harsh results, particularly in cases where the price is near the edge of a tier and there is no quoted market.

Accordingly, FINRA proposes to amend IM-2110-2 to provide that, for the purpose of determining the minimum price improvement obligation where there is no published current inside spread, member firms may calculate a current inside spread by contacting and obtaining priced quotations from at least two unaffiliated dealers. FINRA believes that obtaining priced quotations from at least two unaffiliated dealers provides an adequate proxy for an inside spread typically displayed for an OTC equity security, and notes that members are free to contact more than two unaffiliated dealers. FINRA also notes that, once the member has obtained bid and ask prices from at least two unaffiliated dealers, the proposed rule requires that the highest bid and lowest offer obtained must be used as the basis for calculating the current inside spread for purposes of determining the member's minimum price improvement obligation. In addition, where there is a one-sided quote, the proposed rule change permits a member to determine the current inside spread by using the best price obtained from at least two unaffiliated dealers on the other side of the quote.

Members must document: (1) The name of each dealer contacted; and (2) the quotations received that were used as the basis for determining the current inside spread. FINRA represents that the proposed rule change would apply solely to minimum price-improvement calculations under IM-2110-2 and would not implicate other rules or requirements (e.g., Three Quote Rule).

III. Discussion and Commission's Findings

After careful review, 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 association.⁶ In particular, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁷ 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 Commission believes that the proposed rule change provides a reasonable method of calculating the current inside spread under IM-2110-2 for OTC equity securities priced below \$1.00 where there is no current published inside spread or there is only a one-sided quote. The Commission notes that FINRA members that use the proposed method of calculating the current inside spread are required to document the name of each dealer contacted and the quotations received for the purposes of determining the current inside spread. The Commission believes that the documentation requirement is important to allow proper oversight of calculating the current inside spread, when there is no current published inside spread, or there is only a one-sided quote, in an OTC equity security priced below \$1.00.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-FINRA-2008-064) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E9-3426 Filed 2-18-09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59377; File No. SR-ISE-2009-04]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change Relating to the \$1 Strike Program

February 10, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the

⁶ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78o-3(b)(6).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 21, 2009, the International Securities Exchange, LLC (the “Exchange” or the “ISE”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change, on February 9, 2009, filed Amendment No. 1 to the proposed rule change, and on February 10, 2009 filed partial Amendment No. 2 to the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The ISE proposes to expand the \$1 Strike Program. The text of the proposed rule change is available on the Exchange's Web site (<http://www.ise.com>), at the principal office of the Exchange, 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, the self-regulatory organization 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. The self-regulatory organization 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

The purpose of the proposed rule change is to expand the \$1 Strike Program (the “Program”).³ The Program

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Commission approved the Program as a pilot on June 16, 2003. See Exchange Act Release No. 48033 (June 16, 2003), 68 FR 37036 (June 20, 2003). The pilot was subsequently extended through June 5, 2008. See Exchange Act Release Nos. 49827 (June 8, 2004), 69 FR 33966 (June 17, 2004) (Extending the pilot until August 5, 2004); 50060 (July 22, 2004), 69 FR 45864 (July 30, 2004) (Extending the pilot for 10 months until June 5, 2005); 51769 (May 31, 2005), 70 FR 33232 (June 7, 2005) (Extending the pilot until June 5, 2006); 53806 (May 15, 2006), 71 FR 29694 (Extending the