should be submitted on or before December 22, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–28618 Filed 11–30–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61052; File No. SR–FINRA–2009–066]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of Proposed Rule Change To Adopt FINRA Rule 2251 (Forwarding of Proxy and Other Issuer-Related Materials) in the Consolidated FINRA Rulebook

November 23, 2009.

On October 2, 2009, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] to adopt without material change NASD Rule 2260 (Forwarding of Proxy and Other Materials) and NASD IM–2260 (Approved Rates of Reimbursement) in the consolidated FINRA rulebook.[3] The proposed rule change would combine NASD Rule 2260 and NASD IM–2260 into a single rule that would be renumbered as FINRA Rule 2251 in the consolidated FINRA rulebook. Notice of the proposal was published for comment in the **Federal Register** on October 22, 2009.[4] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

I. Description of the Proposal

NASD Rule 2260 sets forth certain requirements with respect to the transmission of proxy materials and other communications to beneficial owners of securities and the limited circumstances in which members are permitted to vote proxies without instructions from those beneficial owners. NASD IM–2260 regulates the reimbursement that members are entitled to receive in connection with forwarding proxy materials and other communications.

FINRA proposes to combine the two rules, without material change, into a single rule that would be renumbered as FINRA Rule 2251 in the consolidated FINRA rulebook.[5] FINRA proposed making clarifying changes and other changes primarily to reflect the new formatting and terminology conventions of the consolidated FINRA rulebook.[6] In addition, the proposed rule change would add language where appropriate to remind members that they are obligated to comply both with the FINRA rule and applicable Commission rules and/or guidance. With respect to NASD Rule 2260(c)(2)'s provisions allowing a member to give a proxy to vote any stock pursuant to the rules of ''any national securities exchange to which the member is also responsible,'' proposed FINRA Rule 2251 would clarify that a ''member may give a proxy to vote any stock pursuant to the rules of any national securities exchange of which it is a member. * * *''

FINRA stated that it will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval.

II. 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.[7] In particular, the Commission finds that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[8] 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 will continue to provide FINRA members with guidance on the forwarding of proxy and other issuer-related materials, as well as applicable rates of reimbursement. The Commission notes that the consolidation of these rules does not result in any substantive changes to the existing requirements.

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–FINRA–2009–066) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–28679 Filed 11–30–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61061; File No. SR–NYSEArca–2009–44]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Partial Approval of a Proposed Rule Change, as Modified by Amendment No. 4 Thereto, Expanding the Penny Pilot Program

November 24, 2009.

I. Introduction

On May 15, 2009, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') 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 its options trading rule to extend through December 31, 2010

[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The current FINRA rulebook consists of: (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[4] *See* Securities Exchange Act Release No. 60824 (Oct. 14, 2009), 74 FR 54610.

[5] NASD IM–2260 would be redesignated as Supplementary Material within proposed FINRA Rule 2251.

[6] For example, the language in NASD Rule 2260(a) stating that a member ''has an inherent duty'' to forward materials would be revised to state that a member ''shall'' forward such materials. Further, the proposed rule change would move the footnoted provisions defining the terms ''ERISA'' and ''State'' to the rule text, and the footnoted provision regarding verification of investment advisers would be redesignated as Supplementary Material. The proposed rule change would also add internal cross-references within the rule.

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

[8] 15 U.S.C. 78*o*–3(b)(6).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

and expand a program to quote certain options in smaller increments (''Pilot Program'' or ''Pilot''). The proposed rule change was published for comment in the **Federal Register** on May 27, 2009.[3] The Commission received nine comments letters in response to the initial notice of this proposal.[4] On August 19, 2009 and September 22, 2009, the Exchange filed Amendment Nos. 1 and 3, respectively.[5] Among other things, in Amendment No. 3, the Exchange consented to a bifurcation of the filing such that the portion of the proposed rule change proposing to quote all series of IWM (iShares Russell 2000 Index Fund) and SPY (SPDR S&P 500 ETF) in pennies would be subject to further notice and comment prior to Commission action. On September 23, 2009, the Commission solicited further comment on the proposed rule change, as modified by Amendment Nos. 1 and 3, and simultaneously granted partial approval to the proposed rule change, as modified by Amendment Nos. 1 and 3, on an accelerated basis.[6] The Commission specifically requested comment on NYSE Arca's proposal to quote all option series of IWM and SPY in pennies. The Commission received two additional comment letters in response to this further request for comments.[7] On October 30, 2009, the Exchange filed Amendment No. 4 to the proposed rule change.[8] This Order approves the balance of the proposed rule change, as modified by Amendment No. 4.[9]

II. Description of the Proposal

Currently, all seven options exchanges participate in the Pilot Program, which is scheduled to expire on December 31, 2010. The minimum variation for all classes included in the Pilot, except for QQQQ,[10] is $0.01 for all quotations in option series that are quoted at less than $3.00 per contract, and $0.05 for all quotations in option series that are quoted at $3.00 or greater. Thus, the current minimum increment for bids and offers in SPY and IWM is $0.01 for all options series below $3.00 and $0.05 for all options series $3.00 and above. The Exchange proposes to designate all options series of SPY and IWM as eligible to quote and trade in $0.01 increments, regardless of premium value, similar to QQQQ.

III. Discussion and Findings

After careful review of the proposed rule change, Amendment Nos. 1, 3, and 4, the comment letters,[11] and the NYSE Arca Response,[12] the Commission finds that the portion of the proposal to quote IWM and SPY entirely in one-cent increments is consistent with the requirements of the Act, and the rules and regulations thereunder that are applicable to a national securities exchange. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[13] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, 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.[14]

In response to the initial notice of this proposal,[15] the Commission received several comment letters with respect to the portion of the proposal that would allow quoting of all series of options on IWM and SPY in one-cent increments.[16] In response to the additional request for comment, the Commission received two comment letters.[17]

Two commenters do not support this aspect of NYSE Arca's proposal and question NYSE Arca's basis for the proposal.[18] In particular, one commenter does not find persuasive NYSE Arca's rationale that because IWM and SPY have more series trading at premiums between $3.00 and $10.00, the $3.00 breakpoint should be eliminated, noting that only 11% of IWM's national average daily volume and 18% of SPY's national average daily volume is in series with premiums greater than $3.00.[19] In its second comment letter, this commenter stated its belief that the potential benefit to retail investors of eliminating the $3.00 breakpoint in these classes is small and does not outweigh the costs of the proposed change.[20] Specifically, the commenter estimates that eliminating the $3.00 breakpoint in IWM and SPY would result in a 128% increase in quote message traffic. In addition, the commenter believes that investors are already receiving the benefits of penny quoting in these two classes because the majority of volume and trades in these two classes occurs in series that are already quoting in $0.01 increment.[21] Finally, this commenter notes that they have not observed pressure on the minimum increment in SPY and IWM in series priced at $3.00 and above.[22]

One commenter supports NYSE Arca's proposal to eliminate a breakpoint for options on these two exchange-traded funds, as a way to expand the benefits of penny quoting to more options.[23] In its second comment letter, this commenter reiterates its

[3] *See* Securities Exchange Act Release No. 59944 (May 20, 2009), 74 FR 25294 (May 27, 2009) (''Notice'').

[4] *See* letter from Stephen Schuler and Daniel Tierney, Managing Members, Global Electronic Trading Company, dated June 10, 2009 (''GETCO Letter 1''); letter from Edward J. Joyce, President and COO, Chicago Board Options Exchange, dated June 12, 2009 (''CBOE Letter 1''); letter from Thomas Wittman, Vice President, The NASDAQ OMX Group, Inc., dated June 12, 2009 (''Nasdaq Letter''); letter from Christopher Nagy, Managing Director Order Routing Strategy, TD Ameritrade, Inc., dated June 17, 2009 (''Ameritrade Letter''); letter from Thomas F. Price, Managing Director, Securities Industry and Financial Markets Association, dated June 17, 2009 (''SIFMA Letter''); letter from Anthony J. Saliba, CEO, LiquidPoint LLC, dated June 17, 2009 (''LiquidPoint Letter''); letter from Michael J. Simon, Secretary, International Securities Exchange, LLC, dated June 23, 2009 (''ISE Letter''); letter from John Ingrill, Gerard Satur, Karen Wendell, Managing Directors, UBS Securities LLC, dated June 30, 2009 (''UBS Letter''); and letter from Jerome Johnson, Vice President, Market Development, BATS Exchange, Inc., dated August 28, 2009 (''BATS Letter''). *See* Notice, *supra* note 3.

[5] On September 22, 2009, the Exchange filed Amendment No. 2 to the proposed rule change, which it withdrew on September 22, 2009.

[6] *See* Securities Exchange Act Release No. 60711 (September 23, 2009), 74 FR 49419 (September 28, 2009) (order granting partial approval of SR–NYSEArca–2009–44, (''Order'')).

[7] *See* letter from John A. McCarthy, General Counsel, Global Electronic Trading Company, to Elizabeth M. Murphy, Secretary, Commission, dated October 19, 2009 (''GETCO Letter 2'') and letter from Edward J. Joyce, President and Chief Operating Officer, Chicago Board Options Exchange, Incorporated, to Elizabeth M. Murphy, Secretary, Commission, dated October 15, 2009 (''CBOE Letter 2'').

[8] In Amendment No. 4, the Exchange proposes to move the start date for quoting all options on IWM and SPY in one-cent increments to February 1, 2010, to correspond with the second phase-in date for additional classes in the Pilot. The Commission believes that Amendment No. 4 is technical in nature and therefore not subject to separate notice and comment.

[9] The Exchange has granted the Commission an extension of time to act, until November 30, 2009.

[10] Options on QQQQ are quoted in $0.01 increments for all series.

[11] *See supra* notes 4 and 7.

[12] *See* letter from Janet M. Kissane, Senior Vice President—Legal & Corporate Secretary, NYSE Arca, to Elizabeth M. Murphy, Secretary, Commission, dated August 18, 2009.

[13] 15 U.S.C. 78f(b)(5).

[14] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] *See* Notice, *supra* note 3.

[16] *See* CBOE Letter 1, GETCO Letter 1, and SIFMA Letter, *supra* note 4.

[17] *See* GETCO Letter 2 and CBOE Letter 2, *supra* note 7.

[18] *See* CBOE Letter 1, *supra* note 4, at 2–3, and SIFMA Letter, *supra* note 4, at 5.

[19] *See* CBOE Letter 1, *supra* note 4, at 3. This commenter further noted that the average spread width in series with a premium $3.00 or greater is $0.27 for SPY and $0.25 for IWM. *Id.*

[20] *See* CBOE Letter 2, *supra* note 7, at 1.

[21] *See id.* at 2.

[22] *See id.* at 2.

[23] *See* GETCO Letter 1, *supra* note 4, at 2–3.

strong support of NYSE Arca's proposal.[24] This commenter believes that all option series of SPY and IWM are well suited to quoting in penny increments and provides data supporting the elimination of breakpoints with respect to SPY and IWM. Specifically, the commenter compared effective spreads in options on IWM, SPY, and QQQQ and found that the size of the effective spreads for options on IWM and SPY increased markedly at the $3.00 breakpoint, as compared to options on QQQQ. This commenter also compared effective spreads for options on IWM, SPY, and QQQQ when quoted in one-cent increments with effective spreads for SPY and IWM when quoted in five-cent increments. The results show that the size of the quoting increment appears to be a significant determinant of the width of the effective spreads.[25]

The Commission believes that NYSE Arca's proposal is consistent with the Act because allowing market participants to quote in smaller increments has been shown to reduce spreads, thereby lowering costs to investors. The reduction in the minimum quoting increment has resulted in narrowing the average quoted spreads in options included in the Pilot.[26] Permitting all series in options on IWM and SPY to be quoted in smaller increments will provide the opportunity for reduced spreads for a significant amount of trading volume.[27] The Commission believes that the proposed rule change, which will allow quoting in one-cent increments for all series in options on IWM and SPY, is designed to allow the continuing narrowing of spreads.[28]

Further, although the Pilot has contributed to the increase in quote message traffic, it has been manageable by the exchanges and the Options Price Reporting Authority, and the Commission has not received any reports of disruptions in the dissemination of pricing information. As noted in the Order, although the Commission anticipates that NYSE Arca's proposal, including that portion proposing to quote and trade all series of options on SPY and IWM, will contribute to further increases in quotation message traffic, the Commission believes that NYSE Arca's proposal is sufficiently limited such that it is unlikely to increase quotation message traffic beyond the capacity of market participants' systems and disrupt the timely receipt of information.

The Commission believes that eliminating the $3.00 breakpoint in options on IWM and SPY will result in additional meaningful data from which to analyze the impact of quoting and trading entirely in one-cent increments. Currently, only one class, the QQQQ, quotes and trades all series in one-cent increments. The Commission believes that allowing two additional classes to quote and trade all series in pennies may provide valuable information, useful to future analysis of the Penny Pilot.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 4, including whether Amendment No. 4 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–NYSEArca–2009–44 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–NYSEArca–2009–44. 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 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 No. SR–NYSEArca–2009–44 and should be submitted on or before December 22, 2009.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[29] that the proposed rule change (SR–NYSEArca–2009–44) as modified by Amendment No. 4, be, and hereby is, partially approved, as discussed above.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–28680 Filed 11–30–09; 8:45 am]

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[24] *See* GETCO Letter 2, *supra* note 7, at 1–2.

[25] *Id.* at 3–4.

[26] *See* Memorandum from J. Daniel Aromi, Office of Economic Analysis ("OEA"), to Heather Seidel, Assistant Director, Division of Trading and Markets, Commission, dated July 24, 2009.

[27] OEA staff estimated that for a four month period earlier this year, approximately 40.9 million contracts for SPY and approximately 4.5 million contracts for IWM traded at premia of $3.00 or greater, as compared to approximately 2.7 million contracts for QQQQ that traded at premia of $3.00 or greater. *See* Memorandum from J. Daniel Aromi, OEA, to Heather Seidel, Assistant Director, Division of Trading and Markets, Commission, dated August 14, 2009 (measuring from February 2, 2009 to May 27, 2009). These numbers represent approximately 29% of contract volume for SPY and 18% of contract volume for IWM. The Commission specifically requested comment on these findings. *See* Order, *supra* note 6.

[28] One commenter stated that "full access to penny increments provides investors with more flexibility to compete and determine the natural spread for each security independently." This commenter further stated that "penny pricing gives market participants the flexibility to trade with spreads at six or eleven cents wide, as much as it facilitates trading in one or two cent spreads." This commenter explained that even if spreads in a Pilot class increase, quoting in pennies mitigates the increase. For example, the commenter noted that CBOE's March Report showed that for the period August 1, 2008 through January 31, 2009, the average spread in OIH options increased from $0.13 to $0.19. The commenter pointed out that if this class were not quoting in pennies, the $0.06 increase in the spread could have been a $0.10 increase. *See* BATS Letter, *supra* note 4, at 1–2.

[29] 15 U.S.C. 78s(b)(2).

[30] 17 CFR 200.30–3(a)(12).