

displayed prices for ETFs Options available on other exchanges and, thereby, satisfy ISE's obligation under the Options Order Protection and Locked/Crossed Market Plan.¹⁷ Series of the ETFs Options will be subject to exchange rules regarding continued listing requirements, including standards applicable to the underlying ETFs Silver and ETF Gold Trusts. Shares of the ETFs Silver and ETFs Gold Trusts must continue to be traded through a national securities exchange or through the facilities of a national securities association, and must be "NMS stock" as defined under Rule 600 of Regulation NMS.¹⁸ In addition, the underlying shares must continue to be available for creation or redemption each business day from or through the issuer in cash or in kind at a price related to net asset value.¹⁹ If the ETFs Silver or ETFs Gold Trust shares fail to meet these requirements, the exchanges will not open for trading any new series of the respective ETFs Options.

ISE has represented that it has surveillance programs in place for the listing and trading of ETFs Options. For example, ISE may obtain trading information via the ISG from the NYMEX related to any financial instrument traded there that is based, in whole or in part, upon an interest in, or performance of, palladium or platinum. Additionally, the listing and trading of ETFs Options will be subject to the exchange's rules pertaining to position and exercise limits²⁰ and margin.²¹

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²² that the proposed rule change (SR-ISE-2010-19) be, and is hereby, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Florence E. Harmon,
Deputy Secretary.

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¹⁷ See ISE Rule 1902. Specifically, ISE is a participant in the Options Order Protection and Locked/Crossed Market Plan.

¹⁸ 17 CFR 242.600.

¹⁹ See ISE Rule 502(a)-(b).

²⁰ See ISE Rules 412 and 414.

²¹ See ISE Rule 1202. See also FINRA Rule 2360(b) and Commentary .01 to FINRA Rule 2360.

²² 15 U.S.C. 78s(b)(2).

²³ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61979; File No. SR-FINRA-2010-003]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, Relating to Trade Reporting of OTC Equity Securities and Restricted Equity Securities

April 23, 2010.

I. Introduction

On January 15, 2010, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission" or "SEC"), 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 relating to trade reporting of OTC Equity Securities and certain restricted equity securities. On February 5, 2010, FINRA filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on February 19, 2010.³ The Commission received no comment letters on the proposed rule change. On March 25, 2010, FINRA filed Amendment No. 2 to the proposed rule change.⁴ Because Amendment No. 2 is technical in nature, the Commission is not publishing it for comment. This order approves the proposed rule change, as modified by Amendment Nos. 1 and 2.

Background

In 1990, the SEC adopted Rule 144A ("SEC Rule 144A") under the Securities Act of 1933⁵ ("Securities Act") to establish a safe harbor for the private resale of "restricted securities" to "qualified institutional buyers" ("QIBs").⁶ At the same time, FINRA

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 61510 (February 5, 2010), 75 FR 7530 ("Notice").

⁴ Amendment No. 2 reflects changes to FINRA Rule 6635 that were made in SR-FINRA-2010-002, which was filed with the Commission for immediate effectiveness on January 14, 2010. See Securities Exchange Act Release No. 61427 (January 27, 2010), 75 FR 5834 (February 4, 2010).

⁵ 17 CFR 230.144A.

⁶ See Securities Act Release No. 6862 (April 23, 1990), 55 FR 17933 (April 30, 1990). For the purpose of SEC Rule 144A, a QIB is generally defined as any institution acting for its own account, or for the accounts of other QIBs, that in the aggregate owns and invests on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with the institution.

(formerly known as the National Association of Securities Dealers, Inc. ("NASD")) created the PORTAL Market to serve as a system for quoting, trading, and reporting trades in certain designated restricted securities that were eligible for resale under SEC Rule 144A ("PORTAL securities").⁷ In September 2008, the NASDAQ Stock Market ("NASDAQ") ceased the operation of the PORTAL Market.⁸ NASDAQ explained in its rule filing that it is taking a minority stake in a consortium that will control and operate a new electronic platform for handling transactions in SEC Rule 144A-eligible securities.⁹ In October 2009, NASDAQ filed a proposed rule change with the Commission for immediate effectiveness terminating NASDAQ's PORTAL security designation process and removing rules related to the PORTAL Market from its rulebook.¹⁰ As a result, NASDAQ no longer accepts new applications for debt or equity securities seeking PORTAL designation.¹¹

In the instant rule proposal, FINRA has proposed to delete certain PORTAL rules from its rulebook, amend certain other rules to address gaps that elimination of such PORTAL rules would create, amend certain definitions to create consistent use of terminology in FINRA rules, and make certain other clarifying changes.

III. Description of the Proposal

Current FINRA Rule 6610 requires that members report transactions in "OTC Equity Securities" to the OTC

⁷ See Securities Exchange Act Release No. 27956 (April 27, 1990), 55 FR 18781 (May 4, 1990).

⁸ See Securities Exchange Act Release No. 58638 (September 24, 2008), 73 FR 57188 (October 1, 2008). As part of the separation of NASDAQ from FINRA, certain functionality relating to PORTAL, including the qualification and designation of PORTAL securities, became part of NASDAQ's rules and were eliminated from the NASD rules. See Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006).

⁹ In addition to NASDAQ ceasing operation of the PORTAL Market, the Commission has also approved the deletion of the Depository Trust Company ("DTC") requirement that a SEC Rule 144A security, other than investment grade securities, be included in an "SRO Rule 144A System" in order to be eligible for DTC's deposit, book-entry delivery, and other depository services. See Securities Exchange Act Release No. 59384 (February 11, 2009), 74 FR 7941 (February 20, 2009). The PORTAL Market was the only "SRO Rule 144A System." *Id.*

¹⁰ Securities Exchange Act Release No. 60991 (November 12, 2009), 74 FR 60006 (November 19, 2009).

¹¹ See *id.* NASDAQ noted in the filing that nothing in the proposal was "intended to impact securities previously designated as PORTAL securities or alter any existing regulatory obligation applicable to such securities, including, but not limited to, any trade reporting obligation imposed by any self-regulatory organization." *Id.*

Reporting Facility (“ORF”).¹² Under the current definitions in Rule 6420, “restricted securities,” as defined by SEC Rule 144(a)(3), and securities designated in the PORTAL Market are carved out of the ORF reporting requirement.¹³ Transaction reporting for certain of these securities to the ORF—specifically, restricted equity securities that are designated for inclusion in the PORTAL Market—is instead required by FINRA Rule 6633(a).¹⁴

In light of the recent elimination of NASDAQ’s PORTAL rules, FINRA has proposed to eliminate certain of its PORTAL rules.¹⁵ However, because FINRA has determined that elimination of the PORTAL rules that govern transaction reporting would create a gap in the transaction reporting requirements for SEC Rule 144A securities, FINRA proposed to amend FINRA Rule 6622, to ensure that all equity securities that are “restricted securities” under Rule 144(a)(3);¹⁶ and that are traded pursuant to SEC Rule 144A, will continue to be reported to the ORF. Under the proposal, transactions in all restricted equity securities effected pursuant to Commission Rule 144A would generally be required to be reported to the ORF no later than 8 p.m. Eastern Time without interruption.¹⁷ Transactions in restricted equity securities effected pursuant to Commission Rule 144A and executed between 8 p.m. and midnight would be required to be reported the following business day (T+1) by 8 p.m.

In addition, FINRA proposed to amend the definition of “OTC Equity Security” in Rule 6420 to delete the reference to securities that “qualify for real-time trade reporting” and, instead, to define the term as any equity security that is not an “NMS stock” as defined by the Commission in Regulation NMS.¹⁸

The proposed rule change also would eliminate the defined term “non-exchange-listed security” from Rule 6420.¹⁹ The effect of these changes is that any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan will be excluded from the definition of “OTC Equity Security” in Rule 6420.

Further, the proposal would amend the ORF rules to address explicitly transactions in OTC Equity Securities that are executed on an exchange. FINRA’s trade reporting rules historically have been limited to only trades executed “otherwise than on an exchange.”²⁰ As explained in the Notice, the FINRA/NASDAQ TRF Rules, the FINRA/NYSE TRF Rules, and the ADF Rules all include an exception from the reporting obligations for transactions reported on or through an exchange.²¹ These rules collectively provide for the submission of trade reports to FINRA for transactions in NMS stocks only if the transaction is executed over-the-counter. FINRA Rule 6622, which governs the submission of transaction reports to the ORF for transactions in OTC Equity Securities, does not include a similar exception for transactions in otherwise eligible securities that are reported on or through an exchange.²² Thus, FINRA proposed to amend Rule 6622 to include an explicit exception for transactions in OTC Equity Securities reported on or through an exchange, and to amend Rule 6420(k) and Rule 6610 to clarify further that transactions in OTC Equity

of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options.” See 17 CFR 242.600(b)(46), 242.600(b)(47).

¹⁹ FINRA Rule 6440 (Submission of SEA Rule 15c2–11 Information on Non-Exchange-Listed Securities) and NASD Rule 2320(f), which is often referred to as the Three Quote Rule, use the term “non-exchange-listed security.” Because the proposed rule change deletes the term “non-exchange-listed security” from Rule 6420, the proposed rule change also amends FINRA Rule 6440 and NASD Rule 2320(f) to define the term for purposes of those rules. The proposed definition in each rule is identical to the definition as it appeared in FINRA Rule 6420. Consequently, there is no change in the application of either rule as a result of the proposed rule change.

²⁰ See, e.g., FINRA Rule 6100, 6200, and 6300 Series.

²¹ See FINRA Rules 6282(i)(1)(C), 6380A(e)(1)(C), 6380B(e)(1)(C).

²² The ORF Rules do include an exception for transactions in foreign equity securities when the transaction is executed on and reported to a foreign securities exchange or the transaction is executed over-the-counter in a foreign country and is reported to the regulator of securities markets for that country. See FINRA Rule 6622(g).

Securities must be reported to the ORF where such transactions are executed otherwise than on or through an exchange.

FINRA also proposed to conform the definition of “OTC equity security” in Rule 7410 of the OATS rules to the proposed definition in Rule 6420 and explained that the proposed change will not result in any change to the scope of securities required to be reported to OATS. FINRA similarly proposed to eliminate the separate definition of “OTC Equity Security” in FINRA Rule 4560 (Short-Interest Reporting),²³ explaining that the proposal would “exclude from the short-interest record keeping and reporting requirements all restricted equity securities, such that equity securities that are currently PORTAL securities would continue to be excepted from the record keeping and reporting requirements as well as any other restricted equity securities.”²⁴

As stated in the Notice, FINRA represented that it will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the *Regulatory Notice* announcing Commission approval.

IV. Discussion and Commission’s Findings

The Commission has reviewed carefully the proposed rule change and finds that the proposal is consistent with the Act and the rules and regulations thereunder applicable to a national securities association, including the provisions of Section 15A(b)(6) of the Act,²⁵ which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing transactions in securities, and, in

²³ In Amendment No. 1, FINRA stated as follows: “The proposed rule change eliminates the separate definition of “OTC Equity Security” in FINRA Rule 4560 (Short-Interest Reporting). Currently, the PORTAL Rules carve out PORTAL securities from the record keeping and reporting requirements of Rule 4560. See Rule 6635(d). Consistent with this existing exclusion for PORTAL securities, FINRA is proposing to amend Rule 4560 to exclude from the short-interest record keeping and reporting requirements all restricted equity securities, such that equity securities that are currently PORTAL securities would continue to be excepted from the record keeping and reporting requirements as well as any other restricted equity securities.”

²⁴ See Amendment No. 1.

²⁵ 15 U.S.C. 78o–3(b)(6).

¹² See FINRA Rule 6610.

¹³ See FINRA Rule 6420(c) and (d).

¹⁴ See FINRA Rule 6633(a). See also, Notice, *supra* note 3.

¹⁵ FINRA Rule 6633(a). The proposed rule change is limited in scope to equity securities and would not affect the Trade Reporting and Compliance Engine Service (“TRACE”) or the reporting requirements with respect to transactions in debt securities. See Notice *supra* note 3. In addition to the reporting rules, current FINRA Rule 6635 specifies which FINRA rules are and are not applicable to transactions and business activities relating to PORTAL securities. Under the proposal FINRA will retain FINRA Rule 6635 as FINRA Rule 6630 to maintain the status quo with respect to the application of FINRA rules to those securities designated as PORTAL securities prior to October 26, 2009.

¹⁶ See 17 CFR 230.144.

¹⁷ See Notice *supra* note 3, explaining that the ORF reporting session deadline is 8:00 p.m.

¹⁸ Rule 600 of Regulation NMS defines “NMS stock” as any NMS security other than an option. “NMS security” is defined as “any security or class

general, to protect investors and the public interest.²⁶

The proposed rule change is intended to address the cessation of the PORTAL market and clarify the scope of the ORF Rules, as well as make conforming changes to other FINRA Rules. The Commission believes that the proposed rule change is reasonably designed to ensure that FINRA will continue to receive important transaction information with respect to securities that are traded over-the-counter. In addition, the Commission believes that the amended definition "OTC Equity Security," the standardization of that definition throughout FINRA rules and FINRA's other proposed changes will close gaps and add clarity with respect to the application of specified FINRA rules to certain securities.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-FINRA-2010-003), as modified by Amendment Nos. 1 and 2, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷

Florence E. Harmon,
Deputy Secretary.

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DEPARTMENT OF STATE

[Public Notice 6983]

Culturally Significant Objects Imported for Exhibition Determinations: "John Baldessari: Pure Beauty"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "John Baldessari: Pure Beauty," imported from abroad for temporary exhibition within the United States, are of cultural

significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Los Angeles County Museum of Art, Los Angeles, CA, from on or about June 27 2010, until on or about September 12, 2010; at the Metropolitan Museum of Art, New York, NY, from on or about October 18, 2010, until on or about January 9, 2011, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202-632-6473). The address is U.S. Department of State, SA-5, L/PD, Fifth Floor, Washington, DC 20522-0505.

Dated: April 27, 2010.

Maura M. Pally,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

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OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS403]

WTO Dispute Settlement Proceeding Regarding Philippines—Taxes on Distilled Spirits

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative ("USTR") is providing notice that on March 29, 2010, the United States requested establishment of a dispute settlement panel under the *Marrakesh Agreement Establishing the World Trade Organization* ("WTO Agreement") with respect to the taxation of imported distilled spirits in the Philippines. That request may be found at <http://www.wto.org> in a document designated as WT/DS403/4. The panel was established by the World Trade Organization ("WTO") Dispute Settlement Body on April 20, 2010. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of

the dispute settlement proceedings, comments should be submitted on or before June 2, 2010 to be assured of timely consideration by USTR.

ADDRESSES: Public comments should be submitted electronically to <http://www.regulations.gov>, docket number USTR-2010-0005. If you are unable to provide submissions by <http://www.regulations.gov>, please contact Sandy McKinzy at (202) 395-9483 to arrange for an alternative method of transmission. If (as explained below) the comment contains confidential information, then the comment should be submitted by fax only to Sandy McKinzy at (202) 395-3640.

FOR FURTHER INFORMATION CONTACT: Courtney E. Smothers, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, (202) 395-5657.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 2527(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for establishment of a WTO dispute settlement panel. Consistent with this obligation, USTR is providing notice that it requested a panel and the panel has been established pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"). The panel will hold its meetings in Geneva, Switzerland, and would be expected to issue a report on its findings and recommendations within nine months after it is established.

Major Issues Raised by the United States

The United States has raised concerns with the Philippines over taxation of distilled spirits many times over the past several years, both bilaterally and in WTO forums. On January 14, 2010, the United States requested consultations regarding this issue. The Philippines taxes distilled spirits at rates that differ depending on the product from which the spirit is distilled. The Philippines taxes distilled spirits made from certain materials that are typically produced in the Philippines, such as cane sugar and palm, at a low rate (*e.g.* 13.59 pesos per proof liter in 2009). Other distilled spirits are taxed at significantly higher rates (from approximately ten to forty times higher) than the low rate applied to domestic products. The Philippines' taxes on distilled spirits appear not to tax similarly imported distilled spirits

²⁶ In approving this 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).

²⁷ 17 CFR 200.30-3(a)(12).