

## Temporary Order

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

*It is hereby ordered*, pursuant to section 9(c) of the Act, that Covered Persons are granted a temporary exemption from the provisions of section 9(a), effective as of the date of the Injunction, solely with respect to the Injunction, subject to the condition in the application, until the date the Commission takes final action on an application for a permanent order.

By the Commission.

**Elizabeth M. Murphy**,

*Secretary*.

[FR Doc. 2010-18313 Filed 7-26-10; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold Closed Meetings on Wednesday, July 28, 2010 at 2:30 p.m. and on Thursday, July 29, 2010 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Casey, as duty officer, voted to consider the items listed for the Closed Meetings in closed session, and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting scheduled for Wednesday, July 28, 2010 will be:

Institution and settlement of an injunctive action; and

Institution and settlement of administrative proceedings.

The subject matter of the Closed Meeting scheduled for Thursday, July 29, 2010 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings; and  
Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551-5400.

Dated: July 22, 2010.

**Elizabeth M. Murphy**,

*Secretary*.

[FR Doc. 2010-18451 Filed 7-23-10; 11:15 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62539; File No. SR-FINRA-2010-029]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving the Proposed Rule Change To Adopt FINRA Rule 5141 (Sale of Securities in a Fixed Price Offering) in the Consolidated FINRA Rulebook

July 21, 2010.

#### I. Introduction

On May 27, 2010, the 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposal to adopt FINRA Rule 5141 (Sale of Securities in a Fixed Price Offering) in the consolidated FINRA rulebook and to delete NASD Rules 0120(h), 2730, 2740 and 2750, and NASD IM-2730, IM-2740 and IM-2750. This proposal was published for comment in the **Federal Register** on June 21, 2010.<sup>3</sup> The Commission received no comments regarding the proposal. This order approves this proposed rule change.

#### II. Description of the Proposed Rule Change

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),<sup>4</sup>

FINRA proposed to adopt FINRA Rule 5141 (Sale of Securities in a Fixed Price Offering) in the Consolidated FINRA Rulebook and to delete NASD Rules 0120(h), 2730, 2740 and 2750, and NASD IM-2730, IM-2740 and IM-2750.

Proposed FINRA Rule 5141 would be a new, consolidated rule intended to protect the integrity of fixed price offerings<sup>5</sup> by ensuring that securities in such offerings are sold to the public at the stated public offering price or prices, thereby preventing an undisclosed better price. The proposed rule is based in part on, and would replace, the current fixed price offering rules (NASD Rules 0120(h), 2730, 2740 and 2750 and associated Interpretive Materials ("IMs") 2730, 2740 and 2750).<sup>6</sup> Like the current fixed price offering rules, the proposed rule would prohibit the grant of certain preferences (e.g., selling concessions, discounts, other allowances or various economic equivalents) in connection with fixed price offerings of securities.

#### A. Proposed FINRA Rule 5141

Paragraph (a) of the proposed rule would provide that no member or person associated with a member that participates in a selling syndicate or

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).

<sup>5</sup> NASD Rule 0120(h) defines the term "fixed price offering" to mean the offering of securities at a stated public offering price or prices, all or part of which securities are publicly offered in the United States or any territory thereof, whether or not registered under the Securities Act of 1933. The term does not include offerings of "exempted securities" or "municipal securities" as those terms are defined in Sections 3(a)(12) and 3(a)(29), respectively, of the Securities Exchange Act or offerings of redeemable securities of investment companies registered pursuant to the Investment Company Act of 1940 which are offered at prices determined by the net asset value of the securities. The proposed rule change would incorporate the definition of "fixed price offering" into the proposed rule in substantially identical form. See proposed FINRA Rule 5141.04. See also Section II.B *infra* and Section (C) under Item II.C in the Notice.

<sup>6</sup> The current fixed price offering rules are also known as the *Papilsky* rules because of the court decision with which they are commonly associated. See *Papilsky v. Berndt*, Fed. Sec. L. Rep (CCH) ¶ 95,627 (S.D.N.Y. June 24, 1976). For more information regarding the background of NASD Rules 0120(h), 2730, 2740 and 2750 and the associated IMs, see *Notice to Members* 81-3 (February 1981) (Adoption of New Rules Concerning Securities Distribution Practices) ("Notice to Members 81-3"); see also Securities Exchange Act Release No. 17371 (December 12, 1980), 45 FR 83707 (December 19, 1980) (File No. SR-NASD-78-3).

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

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

<sup>3</sup> Securities Exchange Act Release No. 62299 (June 16, 2010), 75 FR 35105 (June 21, 2010) (SR-FINRA-2010-029) ("Notice").

<sup>4</sup> The current FINRA rulebook consists of: (1) FINRA Rules; (2) NASD Rules; and (3) rules