

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58245; File No. SR-FINRA-2008-026)

July 29, 2008

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto, to Adopt the FINRA Rule 0100 Series (General Standards) in the Consolidated FINRA Rulebook

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 16, 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” or “SEC”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. On July 16, 2008, FINRA filed Amendment No. 1 to the proposed rule change. 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

FINRA proposes to adopt the NASD Rule 0100 Series as FINRA rules in the consolidated FINRA rulebook. The proposed rule change would renumber the NASD Rule 0100 Series as the FINRA Rule 0100 Series in the consolidated FINRA rulebook. The text of the proposed rule change is available at FINRA, the Commission’s Public Reference Room, and www.finra.org.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

Background

As part of the process of developing the new consolidated rulebook (“Consolidated FINRA Rulebook”),³ FINRA is proposing to adopt the NASD Rule 0100 Series (General Provisions) as FINRA rules in the Consolidated FINRA Rulebook, with the exception of NASD Rule 0120, which will be addressed at a later date in a separate filing. The NASD Rule 0100 Series governs the adoption, application and interpretation of NASD rules and sets forth certain definitions not contained in the FINRA By-Laws. Additionally, these rules address FINRA’s delegation of certain responsibilities to its subsidiaries, and its authority and access with respect to its subsidiaries. FINRA is proposing to transfer this rule series as the FINRA Rule 0100

³ The current FINRA rulebook consists of two sets of rules: (1) NASD Rules and (2) rules incorporated from NYSE (“Incorporated NYSE Rules”) (together referred to as the “Transitional Rulebook”). The Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (“Dual Members”). Dual Members also must comply with NASD Rules. For more information about the rulebook consolidation process, see the FINRA Information Notice, March 12, 2008 (Rulebook Consolidation Process).

Series, renamed as “General Standards,” to the Consolidated FINRA Rulebook, with only minor changes, as described below. The proposed rule change would not impose any new requirements on FINRA members, but would clarify and streamline these rules for inclusion in the Consolidated FINRA Rulebook. FINRA notes that, notwithstanding their transfer to the Consolidated FINRA Rulebook, these rules of general applicability would apply equally to both the Transitional Rulebook and the Consolidated FINRA Rulebook.⁴

Proposal

NASD Rule 0111 (Adoption of Rules) provides that the provisions of the rulebook are adopted pursuant to Article VII, Section 1, of the By-Laws. This section of the By-Laws grants the FINRA Board of Governors (“Board”) authority to, among other things, adopt such FINRA rules, and changes or additions thereto, as it deems necessary or appropriate, provided, however, that the Board may at its option submit to the membership any such adoption, change or addition to such rules. FINRA is proposing that this rule be transferred into the Consolidated FINRA Rulebook with only minor, non-substantive changes (e.g., replacing references to NASD with FINRA and certain renumbering to reflect the new organizational structure of the Consolidated FINRA Rulebook).

NASD Rule 0112 (Effective Date) states that the rules shall become effective as provided in Article XI, Section 1, of the By-Laws. This section of the By-Laws provides that, if rules, or amendments to such, are approved by the Commission, they will become effective as of such date as the Board may prescribe. Historically, it has been FINRA's general practice to state the

⁴ See SR-FINRA-2008-021 (Proposed Rule Change Relating to the Adoption of NASD Rules 4000 through 10000 Series and the 12000 through 14000 Series as FINRA Rules in the New Consolidated FINRA Rulebook), discussing “Rules of General Applicability.”

effective date for a rule change in a Regulatory Notice following approval by the Commission, and FINRA intends to continue this practice. Accordingly, FINRA is proposing that this rule be transferred into the Consolidated FINRA Rulebook with only minor, non-substantive changes.

NASD Rule 0113 (Interpretation) states that the rules shall be interpreted in such manner as will aid in effectuating the purposes and business of NASD, and so as to require that all practices in connection with the investment banking and securities business shall be just, reasonable and not unfairly discriminatory. FINRA proposes to eliminate the express reference to “practices in connection with the investment banking and securities business” in the rule to reflect that certain FINRA rules, such as the requirement to adhere to just and equitable principles of trade, are not limited in scope to such activities. The proposal would further provide that FINRA rules shall be interpreted in light of the purposes sought to be achieved by the rules and to further FINRA’s regulatory programs. FINRA is proposing this rule change to better reflect that FINRA will continue to interpret its rules in a manner that promotes the purpose of the rules and FINRA’s regulatory programs.

NASD Rule 0114 (Effect on Transactions in Municipal Securities) provides, in part, that the rules shall not be construed to apply to transactions in municipal securities. NASD Rule 0116 (Application of Rules of the Association to Exempted Securities) states that the terms “exempted securities” and “municipal securities” shall have the meanings specified in Exchange Act Sections 3(a)(12) and 3(a)(29), respectively, and includes a list of NASD rules applicable to transactions and business activities relating to exempted securities, except municipal securities. FINRA is proposing to incorporate the statement in Rule 0114 that the FINRA rules are not applicable to transactions in municipal securities into Rule 0116, and transfer Rule 0116, as amended, to the Consolidated FINRA Rulebook.

The remainder of Rule 0114 states that the rules shall not be construed to apply to contracts made prior to the effective date of the rules. FINRA is proposing to eliminate this provision in Rule 0114 as unnecessary because the rules by their own terms determine their applicability.

NASD Rule 0115 (Applicability) provides that the rules shall apply to all members and persons associated with a member and that persons associated with a member shall have the same duties and obligations as a member. Rule 0115 goes on to prescribe the loss of membership and registration privileges for members or persons associated with a member who have been expelled, suspended, cancelled or revoked from membership or registration. FINRA is proposing that this rule be transferred into the Consolidated FINRA Rulebook with only minor, non-substantive changes.

NASD Rule 0121 (Definitions in NASD By-Laws) states that, unless the context otherwise requires, or unless otherwise defined in these rules, terms used in the rules and interpretive material, if defined in the By-Laws, shall have the meaning as defined in the By-Laws. FINRA is proposing non-substantive changes to Rule 0121 to simplify the rule language.

NASD Rule 0130 (Delegation, Authority and Access) delegates authority to certain NASD subsidiaries to act on behalf of NASD as set forth in a Plan of Allocation and Delegation adopted by the Board of Governors and approved by the SEC. Further, the rule provides that, notwithstanding any delegation of authority under the rule, the staff, books, records and premises of the subsidiaries are that of NASD, subject to oversight pursuant to the Exchange Act, and all officers, directors, employees and agents of the subsidiaries are that of NASD for purposes of the Exchange Act. FINRA is proposing that this rule be transferred into the Consolidated FINRA Rulebook with only minor, non-substantive changes.

FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁵ 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. FINRA believes that the proposed rule change will clarify and streamline the General Provisions rules for adoption as FINRA rules in the new Consolidated FINRA Rulebook.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which FINRA consents, the Commission will:

A. by order approve such proposed rule change; or

⁵ 15 U.S.C. 78q-3(b)(6).

- B. institute proceedings to determine whether the proposed rule change should be disapproved.

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. Please include File Number SR-FINRA-2008-026 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2008-026. 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 10:00 a.m. and 3:00 p.m. Copies of the 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-2008-026 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Florence E. Harmon
Acting Secretary

⁶ 17 CFR 200.30-3(a)(12).