

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57820; File No. SR-FINRA-2008-017)

May 15, 2008

Self-Regulatory Organizations: Financial Industry Regulatory Authority, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Section 1(a) of Article III of the FINRA By-Laws

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 7, 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”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by FINRA. This order provides notice of the proposed rule change and approves the proposed rule change on an accelerated basis.

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

FINRA is proposing to amend Section 1(a) of Article III of the FINRA By-Laws, to interpret the reference to a “registered broker” in Section 1(a) of Article III of the FINRA By-Laws to include any bank exempted from the definition of “broker” under Section 3(a)(4)(E) of the Act³ as of the date of filing of the proposed rule change. The proposed rule change is submitted in furtherance of the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. (“NYSE Regulation”). There are no changes to the text of FINRA rules as a result of the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78c(a)(4)(E).

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 III 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

On July 30, 2007, NASD and NYSE Regulation consolidated their member firm regulation operations into a combined organization, FINRA.⁴ To achieve the consolidation’s goal to eliminate duplicative member firm regulation and enable FINRA to meet its new regulatory responsibilities, the NYSE amended NYSE Rule 2(b) to require FINRA membership as a condition of being an NYSE member organization (“Mandatory FINRA Membership filing”).⁵ Moreover, in furtherance of the

⁴ On July 26, 2007, the Commission approved amendments to the NASD By-Laws to implement governance and related changes to accommodate the consolidation of the member firm regulatory functions of NASD and NYSE Regulation. See Securities Exchange Act Release No. 56145 (July 26, 2007), 72 FR 42169 (Aug. 1, 2007) (File No. SR-NASD-2007-023). The Commission also approved a plan by FINRA and NYSE Regulation to allocate regulatory responsibility relating to the NYSE member firm regulation rules to FINRA. See Securities Exchange Act Release No. 56148 (July 26, 2007), 72 FR 42146 (Aug. 1, 2007) (File No. 4-544).

⁵ See Securities Exchange Act Release No. 56654 (Oct. 12, 2007), 72 FR 59129 (Oct. 18, 2007) (File No. SR-NYSE-2007-67); Securities Exchange Act Release No. 56953 (Dec. 12, 2007), 72 FR 71990 (Dec. 19, 2007) (extending grace period for NYSE-only member organizations to apply for and be approved as FINRA members to June 30, 2008). See also Securities Exchange Act Release No. 56751 (Nov. 6, 2007), 72 FR 64098 (Nov. 14, 2007) (File No. SR-FINRA-2007-19).

consolidation, FINRA adopted NASD IM-1013-1 to enable eligible NYSE member organizations to become FINRA members through an expedited process.⁶

NYSE Rule 2(b) expressly permits entities that are exempt from registration as brokers or dealers pursuant to the Act to become NYSE member organizations.⁷ In contrast, Section 1(a) of Article III of the FINRA By-Laws addresses those “registered” brokers, dealers, municipal securities brokers or dealers, or government securities brokers or dealers that are eligible to become members of FINRA. Accordingly, in furtherance of the consolidation, the proposed rule change would allow FINRA to treat any NYSE member organization that, as of the date of filing of the proposed rule change, is a bank exempt from the definition of broker under Section 3(a)(4)(E) of the Act as a registered broker for purposes of the FINRA By-Laws, thereby allowing any such bank to be eligible to become a FINRA member.⁸

FINRA believes this interpretation is necessary notwithstanding the prohibitions of Section 15A(g)(1) of the Act,⁹ which requires a registered securities association to deny membership to any person who is not a registered broker or dealer. The Commission has already recognized the important benefits of eliminating duplicative member firm regulation through the consolidation of the member firm regulatory operations of NASD and NYSE Regulation. Interpreting the reference to registered broker in Section 1(a) of Article III of the FINRA By-Laws to include any bank

⁶ See Securities Exchange Act Release No. 56653 (Oct. 12, 2007); 72 FR 59127 (Oct. 18, 2007) (File No. SR-NASD-2007-056).

⁷ See also NYSE Rule 346(a).

⁸ This category of NYSE member organizations is limited to one entity.

⁹ 15 U.S.C. 78o-3(g)(1).

exempted from the definition of “broker” under Section 3(a)(4)(E) of the Act for the narrow purposes of FINRA membership will allow FINRA to consider all NYSE members for membership and to assume responsibility for member firm regulation of such entities.

Any bank becoming a FINRA member pursuant to this interpretation, and its associated persons, would be required to comply with the FINRA By-Laws, Schedules to the By-Laws, and all applicable FINRA rules,¹⁰ excluding the following: (a) the bank would not be required to be a registered broker-dealer; and (b) as long as the bank remains subject to bank capital adequacy requirements, FINRA would not require it to comply with capital requirements of either the NASD or the consolidated FINRA rules. FINRA would provide any such bank 180 days following approval of its membership application in which to achieve compliance with the NASD rules governing member conduct. FINRA also would require the bank to file a Form BD for FINRA purposes only¹¹ and the information provided on the form would be available via BrokerCheck pursuant to NASD IM-8310-2.¹² The bank, as part of the application process, also would be required to submit an amended Form U4 for each associated person denoting any registration categories that are recognized jointly by FINRA and NYSE (e.g., General

¹⁰ The FINRA rulebook currently consists of the NASD rules and certain incorporated NYSE rules. The incorporated NYSE rules apply solely to those members of FINRA that are also members of NYSE on or after July 30, 2007, until such time as FINRA adopts a consolidated rulebook applicable to all of its members.

¹¹ FINRA understands that a bank relying on Section 3(a)(4)(E) of the Act is not required to file Form BD with the Commission.

¹² FINRA will need to implement certain systems changes to accommodate the filing of a Form BD by any bank that becomes a member of FINRA pursuant to this interpretation.

Securities Representative (Series 7)).

Any bank applying for FINRA membership pursuant to this interpretation would not be eligible to rely on the waive-in process set forth in NASD IM-1013-1, since that process was primarily designed for those NYSE member organizations whose business activities are limited to “permitted floor activities” as defined in NASD IM-1013-1. Rather, a bank applying for FINRA membership pursuant to this interpretation would be required to apply for and receive approval pursuant to the application process described in NASD Rule 1013 (New Membership Application and Interview). FINRA recognizes that NYSE has a comprehensive membership application and review process based on similar principles and standards to that of FINRA, and thus would work expeditiously to consider for approval any application pursuant to this interpretation.

In addition, similar to those NYSE member organizations that become FINRA members pursuant to the waive-in process, any bank relying on this interpretation would not be assessed the fee set forth in Section 4(b)(1) to Schedule A of the FINRA By-Laws for any initial Form U4 filed by the applicant with FINRA for the registration of any representative or principal associated with the firm at the time it submits its application for FINRA membership. Also, the bank would not be assessed the membership application fee set forth in Section 4(e) to Schedule A of the FINRA By-Laws. FINRA believes these fee waivers are appropriate, since NYSE mandated FINRA membership in furtherance of the consolidation and because the application review process will not require the same resources as when a new applicant that is not already a member of NYSE seeks membership.

The effective date of the proposed rule change would be the date of Commission

approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b) of the Act, including Section 15A(b)(6), 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 further facilitate the consolidation of the member firm regulation functions of FINRA and NYSE Regulation, resulting in more effective and efficient regulation of all brokers, thereby enhancing investor protection.

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. 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-2008-017 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-FINRA-2008-017. 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, NW, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm.. Copies of such 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-2008-017 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission 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.¹³ As such, the Commission finds the proposal to be consistent with the objectives of Section 15A of the Act,¹⁴ in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and in general, to protect investors and the public interest. The proposed rule change furthers the purposes of the consolidation by recognizing the unique status of any NYSE member organization that is exempt from the definition of broker under Section 3(a)(4)(E) of the Act. Moreover, the proposed rule change does not propose any substantive amendments to existing rules.

The Commission also finds good cause for approving the proposed rule change prior to the 30th day after its publication in the Federal Register. Accordingly, the Commission believes good cause exists, consistent with Sections 15A(b)(5) and 19(b) of the Act to approve the proposed rule change on an accelerated basis.

¹³ In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁴ 15 U.S.C. 78o-3(b)(6).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁵ that the proposed rule change (SR-FINRA-2008-017) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Florence E. Harmon
Deputy Secretary

¹⁵ 15 U.S.C. 78s(b)(2).

¹⁶ 17 CFR 200.30-3(a)(12).