

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61087; File No. SR-FINRA-2009-078)

December 1, 2009

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Update Certain Cross-References within Certain FINRA Rules

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> notice is hereby given that on November 13, 2009, Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I , II and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

FINRA is proposing to update cross-references within certain FINRA rules to reflect changes adopted in the consolidated FINRA rulebook and to make non-substantive technical changes to certain FINRA and NASD rules.

The text of the proposed rule change is available on FINRA’s Web site at <http://www.finra.org>, at the principal office of FINRA and at the Commission’s Public Reference Room.

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

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

FINRA is in the process of developing a new consolidated rulebook (“Consolidated FINRA Rulebook”).<sup>4</sup> That process involves FINRA submitting to the Commission for approval a series of proposed rule changes over time to adopt rules in the Consolidated FINRA Rulebook. The phased adoption and implementation of those rules necessitates periodic amendments to update rule cross-references and other non-substantive technical changes in the Consolidated FINRA Rulebook.

The proposed rule change would update rule cross-references to reflect changes adopted in the Consolidated FINRA Rulebook. Specifically, the proposed rule change would update FINRA Rule 0150 to reflect the incorporation into the Consolidated FINRA Rulebook of NASD

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<sup>4</sup> 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).

Rule 3330 (Payment Designed to Influence Market Prices, Other than Paid Advertising) as FINRA Rule 5230 (Payments Involving Publications that Influence the Market Price of a Security),<sup>5</sup> NASD Rule 2250 as FINRA Rule 2269 (Disclosure of Participation or Interest in Primary or Secondary Distribution)<sup>6</sup> and certain paragraphs of NASD Rule 2330 (Customers' Securities or Funds) as FINRA Rule 2150 (Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts).<sup>7</sup>

Similarly, rule cross-references in FINRA Rule 6635 (FINRA Rules) would be updated to reflect the adoption of NASD Rule 2240 as FINRA Rule 2262 (Disclosure of Control Relationship with Issuer),<sup>8</sup> NASD Rule 2250 as FINRA 2269 (Disclosure of Participation or Interest in Primary or Secondary Distribution),<sup>9</sup> certain paragraphs of NASD Rule 2330 (Customers' Securities or Funds) as FINRA Rule 2150 (Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts)<sup>10</sup> and NASD Rule 3340 as FINRA Rule 5260 (Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts).<sup>11</sup>

The proposed rule change also would amend FINRA Rules 2357 (Communications with the Public and Customers Concerning Index Warrants, Currency Index Warrants and Currency Warrants) and 9551 (Failure to Comply with Public Communication Standards) to reflect the

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<sup>5</sup> See Securities Exchange Act Release No. 60648 (September 10, 2009), 74 FR 47837 (September 17, 2009) (Order Approving File No. SR-FINRA-2008-048).

<sup>6</sup> See Securities Exchange Act Release No. 60659 (September 11, 2009), 74 FR 48117 (September 21, 2009) (Order Approving File No. SR-FINRA-2009-044).

<sup>7</sup> See Securities Exchange Act Release No. 60701 (September 21, 2009); 74 FR 49425 (September 28, 2009) (Order Approving File No. SR-FINRA-2009-014).

<sup>8</sup> See note 6.

<sup>9</sup> See note 6.

<sup>10</sup> See note 7.

<sup>11</sup> See note 6.

adoption of NASD Rule 2220 as FINRA Rule 2220 (Options Communications) in the Consolidated FINRA Rulebook.<sup>12</sup> Moreover, the proposed rule change would update FINRA Rule 2357 (Communications with the Public and Customers Concerning Index Warrants, Currency Index Warrants and Currency Warrants) to delete references to NASD Rule 2220(c)(5) and (d)(2)(C)(v) as these subparagraphs will not be transferred into the Consolidated FINRA Rulebook as part of FINRA Rule 2220. These subparagraphs were deleted by SR-FINRA-2008-013, which became effective on March 4, 2009.<sup>13</sup>

Additionally, the proposed rule change would make non-substantive technical changes to paragraphs (e) and (f) of NASD Rule 2320 (Best Execution and Interpositioning) to reflect changes approved by the Commission in SR-FINRA-2007-024, which became effective on September 8, 2009,<sup>14</sup> and to FINRA Rule 5122 (Private Placements of Securities Issued by Members). All of the proposed rule changes noted above will become effective on December 14, 2009.

Finally, the proposed rule change would update rule cross-references in FINRA Rule 9217 (Violations Appropriate for Disposition Under Plan Pursuant to SEA Rule 19d-1(c)(2)) to reflect the incorporation of NASD Rule 2220 into the Consolidated FINRA Rulebook as FINRA Rule 2220 (Options Communications)<sup>15</sup> and the deletion of NYSE Rule 445 (Anti-Money

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<sup>12</sup> See Securities Exchange Act Release No. 60534 (August 19, 2009), 74 FR 44410 (August 28, 2009) (Order Approving File No. SR-FINRA-2009-036).

<sup>13</sup> See Securities Exchange Act Release No. 58738 (October 6, 2008); 73 FR 60371 (October 10, 2008) (Order Approving File No. SR-FINRA-2008-013).

<sup>14</sup> See Securities Exchange Act Release No. 60635 (September 8, 2009); 74 FR 47302 (September 15, 2009) (Order Approving File No. SR-FINRA-2007-024).

<sup>15</sup> See note 12.

Laundering Compliance Program)<sup>16</sup> and certain paragraphs of NYSE Rule 352 (Guarantees, Sharing in Accounts, and Loan Arrangements)<sup>17</sup> from the FINRA rulebook.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date for the proposed rule changes to NASD Rule 2320 and FINRA Rules 0150, 2357, 5122, 6635 and 9551 will be December 14, 2009.<sup>18</sup> The implementation date for the proposed rule changes to FINRA Rule 9217 will be December 14, 2009, except the proposed change that would eliminate the reference to NYSE Rule 445 from FINRA Rule 9217, which will be implemented on January 1, 2010.<sup>19</sup>

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>20</sup> 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 the proposed rule change will provide greater clarity to members and the public regarding FINRA's rules.

### 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.

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<sup>16</sup> See Securities Exchange Act Release No. 60645 (September 10, 2009), 74 FR 47630 (September 16, 2009) (Order Approving File No. SR-FINRA-2009-039).

<sup>17</sup> See note 7.

<sup>18</sup> See Regulatory Notice 09-60 (October 2009).

<sup>19</sup> See note 18.

<sup>20</sup> 15 U.S.C. 78q-3(b)(6).

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>21</sup> and Rule 19b-4(f)(6) thereunder.<sup>22</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2009-078 on the subject line.

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<sup>21</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>22</sup> 17 CFR 240.19b-4(f)(6).

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-FINRA-2009-078. 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 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 publicly available. All submissions should refer to File Number SR-FINRA-2009-078 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.<sup>23</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>23</sup> 17 CFR 200.30-3(a)(12).